

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

United States v. Chon

No. No. 20-4009, United States Court of Appeals for the Tenth Circuit (May 6, 2020)

SUMMARY

The Tenth Circuit denied a certificate of appealability, holding that the district court properly dismissed a § 2241 habeas application as an unauthorized second or successive § 2255 motion challenging a pseudoephedrine conviction under the Ex Post Facto Clause. The court emphasized that the relief sought, not the pleading title, determines whether a filing is a § 2255 motion, and that § 2255(h) and § 2244(b) clearly foreclose jurisdiction over such unauthorized filings, rejecting the argument that the **Califano v. Sanders** presumption of judicial review applies to overcome the statutory bar.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	HOLMES; PHILLIPS; MORITZ
JURISDICTION	Federal
DECIDED	May 6, 2020
DOCKET	No. 20-4009
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from district court's dismissal of § 2241 application as second or successive § 2255 motion; application for COA.
STANDARD OF REVIEW	Whether jurists of reason would find it debatable whether the district court's procedural ruling was correct.
PRECEDENTIAL VALUE	unpublished
PARTIES	Tae H. Chon v. United States of America

TOPICS

- habeas corpus
- criminal procedure
- subject matter jurisdiction
- appellate procedure
- constitutional law

PRACTICE AREAS

- Criminal Law
- Habeas Corpus

QUESTIONS PRESENTED

1. Whether the district court correctly determined that Mr. Chon's filing must be treated as a second or successive § 2255 motion and dismissed it for lack of jurisdiction.
2. Whether the district court abused its discretion by dismissing rather than transferring the filing to this court for authorization.
3. Whether Mr. Chon is entitled to a certificate of appealability.

HOLDINGS

1. The district court correctly determined that the filing must be treated as a second or successive § 2255 motion because it sought relief from conviction on constitutional grounds, and the court lacked jurisdiction to consider it without authorization from the circuit court.

KEY QUOTATIONS

“It is the relief sought, not his pleading's title, that determines whether the pleading is a § 2255 motion.” (2)

“If the prisoner's pleading must be treated as a second or successive § 2255 motion, the district court does not even have jurisdiction to deny the relief sought in the pleading.” (2)

“No reasonable jurist could debate the district court's decision to dismiss Mr. Chon's unauthorized filing for lack of jurisdiction.” (3)

FACTUAL BACKGROUND

Mr. Chon was convicted of possessing pseudoephedrine in violation of 21 U.S.C. § 841(c)(2). His conviction was affirmed on direct appeal. He has filed several unsuccessful collateral challenges, including a § 2255 motion. In November 2019, he filed a document purportedly under § 2241 arguing that his conviction violated the Ex Post Facto Clause.

PROCEDURAL HISTORY

Mr. Chon filed a § 2241 application in November 2019 challenging his conviction on ex post facto grounds. The district court determined the filing must be treated as an unauthorized second or successive § 2255 motion and dismissed it for lack of jurisdiction. Mr. Chon seeks a COA to appeal that dismissal.

DISPOSITION

dismissed

CASES CITED

- United States v. Chon, 291 F. App'x 877 (10th Cir. 2008)
- United States v. Nelson, 465 F.3d 1145 (10th Cir. 2006)
- In re Cline, 531 F.3d 1249 (10th Cir. 2008)
- United States v. Harper, 545 F.3d 1230 (10th Cir. 2008)

- Slack v. McDaniel, 529 U.S. 473 (2000)
- Califano v. Sanders, 430 U.S. 99 (1977)

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