

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

In re: Gary Baptiste

828 F.3d 1337 (11th Cir. 2016) · No. 16-13959-J · Decided July 13, 2016

SUMMARY

The Eleventh Circuit denied Gary Baptiste’s second application for authorization to file a successive 28 U.S.C. § 2255 motion based on *Johnson v. United States*. The court held that the application presented the same claim previously rejected and was therefore barred by 28 U.S.C. § 2244(b)(1), with additional support from the prohibition on reconsideration in § 2244(b)(3)(E) and the law-of-the-case doctrine. The court concluded that Baptiste had not shown any applicable exception warranting reconsideration.

CASE DETAILS

COURT	United States Court of Appeals for the Eleventh Circuit
WRITING FOR THE COURT	Joel F. Dubina Hull; Ed Carnes Marcus; Julie Carnes
JURISDICTION	Federal
DECIDED	July 13, 2016
DOCKET	16-13959-J
DISPOSITION	dismissed
PROCEDURAL POSTURE	Gary Baptiste petitioned the Eleventh Circuit for authorization to file a second or successive motion under 28 U.S.C. § 2255. The court denied the application because it raised the same Johnson-based claim previously rejected on the merits.
STANDARD OF REVIEW	The court applied the statutory restrictions governing second or successive habeas applications and the law-of-the-case doctrine; no deferential standard of review was expressly identified.
PRECEDENTIAL VALUE	Published and precedential Eleventh Circuit opinion

TOPICS

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QUESTIONS PRESENTED

1. Whether § 2244(b)(1), as incorporated through § 2255(h), requires dismissal of a successive § 2255 authorization application presenting a claim previously rejected on the merits in an earlier authorization application.
2. Whether § 2244(b)(3)(E) bars a prisoner from using a new successive application as a motion for reconsideration of a prior denial of authorization.
3. Whether the law-of-the-case doctrine required adherence to the court's prior ruling because none of its recognized exceptions applied.

HOLDINGS

1. Section 2244(b)(1)'s command that a claim presented in a second or successive habeas application that was presented previously shall be dismissed applies to applications for leave to file a second or successive § 2255 motion when the claim was already rejected on the merits in a prior authorization application.
2. Section 2244(b)(3)(E) bars a prisoner from circumventing the prohibition on rehearing or certiorari by filing a substantively identical successive application that effectively seeks reconsideration of a prior authorization decision.
3. The law-of-the-case doctrine required the Eleventh Circuit to adhere to its prior denial because Baptiste failed to establish any recognized exception.

KEY QUOTATIONS

“Following the lead of our sister circuits, we hold that § 2244(b)(1)’s mandate applies to applications for leave to file a second or successive § 2255 motion presenting the same claims we have already rejected on their merits in a previous application.” (at 1341)

“In short, where we have already denied an application for leave to file a second or successive motion under § 2255 on the merits, we are required by statute and our caselaw to reject a subsequent application raising the same claim.” (at 1343)

FACTUAL BACKGROUND

Baptiste was convicted under 18 U.S.C. §§ 924(c) and 924(o) in connection with using a firearm during, and conspiring to possess a firearm in furtherance of, a drug-trafficking crime. His predicate offense involved conspiring to rob cocaine from a stash house, which the presentence investigation report and written judgment characterized as a drug-trafficking offense. Baptiste did not challenge that characterization before sentencing, in the written judgment, or on direct appeal. He later sought successive § 2255 authorization under Johnson and Welch, then filed a second application asserting substantially the same claim.

PROCEDURAL HISTORY

Baptiste previously sought authorization to file a successive § 2255 motion based on *Johnson v. United States*, and the Eleventh Circuit denied that application on the merits. He filed a second application raising essentially the same claim and disputing the court's prior characterization of his predicate offense as a drug-trafficking crime. The panel denied the new application, concluding that § 2244(b)(1), § 2244(b)(3)(E), and the law-of-the-case doctrine independently required rejection.

DISPOSITION

dismissed

CASES CITED

- *Johnson v. United States*, 135 S. Ct. 2551 (2015)
- *Welch v. United States*, 136 S. Ct. 1257 (2016)
- *In re: Ricardo Pinder, Jr.*, No. 16-12084-J (11th Cir. June 1, 2016)
- *In re Baptiste*, No. 16-12518-J, manuscript op. at 3-4 (11th Cir. June 15, 2016)
- *In re Everett*, 797 F.3d 1282, 1288 (11th Cir. 2015)
- *Green v. United States*, 397 F.3d 101, 102 n.1 (2d Cir. 2005)
- *Taylor v. Gilkey*, 314 F.3d 832, 836 (7th Cir. 2002)
- *Charles v. Chandler*, 180 F.3d 753, 758 (6th Cir. 1999)
- *White v. United States*, 371 F.3d 900, 901 (7th Cir. 2004)
- *Bennett v. United States*, 119 F.3d 470, 470-71 (7th Cir. 1997)
- *United States v. Card*, 220 F. App'x 847, 851 (10th Cir. 2007) (unpublished)
- *United States v. Quirante*, 486 F.3d 1273, 1275 (11th Cir. 2007)
- *Tyler v. Cain*, 533 U.S. 656, 661 (2001)
- *In re Hill*, 715 F.3d 284, 291 (11th Cir. 2013)
- *In re Lambrix*, 776 F.3d 789, 793-94 (11th Cir. 2015)
- *In re Byrd*, 269 F.3d 585, 585 (6th Cir. 2001) (en banc)
- *Thompson v. Calderon*, 151 F.3d 918, 922 (9th Cir. 1998) (en banc)
- *Triestman v. United States*, 124 F.3d 361, 367 (2d Cir. 1997)
- *United States v. Amedeo*, 487 F.3d 823, 829-30 (11th Cir. 2007)

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