

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 23, 2021
Decided April 2, 2021

Before

FRANK H. EASTERBROOK, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

No. 21-1510

TOMAS D. CUESTA, SR.,
Applicant,

On Motion for an Order Authorizing the
District Court to Entertain a Second or
Successive Petition for Collateral Review.

v.

CHRIS S. BUESGEN,
Respondent.

ORDER

In 2001, a Wisconsin jury found Tomas Cuesta guilty of battery, false imprisonment, and reckless endangerment, and he was sentenced to a 40-year prison term. On direct appeal, the Wisconsin appellate court affirmed. *State v. Cuesta*, 257 Wis. 2d 937 (Wis. App. 2002).

Over the next two decades, Cuesta repeatedly but unsuccessfully pursued federal relief from his state convictions and sentence. *See, e.g.*, No. 17-3342 (7th Cir. May 8, 2018); No. 10-cv-107 (W.D. Wis. Jan. 27, 2011); No. 04-cv-645 (E.D. Wis. July 25, 2005). He twice applied under 28 U.S.C. § 2244(b) for leave to file a successive federal petition, but we denied these requests. Nos. 14-3139 & 14-2389 (7th Cir. Oct. 20, 2014); Nos. 11-1341 & 11-1368 (7th Cir. Feb. 23, 2011). In denying his 2014 application, we

warned Cuesta that sending frivolous papers to the court will result in a sanction. *See Alexander v. United States*, 121 F.3d 312 (7th Cir. 1997).

Yet Cuesta again applies for authorization to file a successive collateral attack. He proposes, in general terms, to challenge the scope and conduct of the State's investigation, the process he received as a lawful permanent resident of the United States, and trial counsel's investigation of the evidence. Cuesta also seems to object to his potential removal from this country. None of those arguments meets the standard for a successive collateral attack. *See* 28 U.S.C. § 2244(b)(2). Specifically, they do not rest on new evidence proving Cuesta's actual innocence, or on any new constitutional rule that the Supreme Court has made retroactive. To be sure, Cuesta asserts that some bite-mark evidence was never investigated or considered, and that this evidence would exonerate him. But he raised this very claim in his prior § 2244(b) application in 2014, so we do not consider it here. *See Alexander*, 121 F.3d at 314.

We therefore **DENY** authorization and **DISMISS** Cuesta's application. And, in keeping with our prior warning, we impose the following sanction:

Cuesta is fined \$500. Until he pays that sum to the clerk of this court, any collateral attack on his convictions and sentence from 2001 that he submits to any federal court of this circuit will be returned unfiled. Any applications for leave to file successive collateral attacks on those convictions and sentence will be deemed denied 30 days after filing unless the court orders otherwise. *See id.* at 315–16.