

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

Submitted November 14, 2022

Decided November 21, 2022

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

No. 22-3039

PETER GAKUBA,
Applicant,

v.

ROB JEFFREYS,
Respondent.

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

ORDER

Peter Gakuba applies for leave to file a successive collateral attack on his Illinois conviction and 12-year prison sentence for aggravated sexual assault of a minor. We deny that request and impose a sanction for Gakuba's repeated frivolous filings.

Gakuba's first petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenged the trial court's admission of certain testimony and DNA evidence, the sufficiency of the evidence, the denial of motions to represent himself and disqualify prosecutors and judges, and his sentence. The district court denied the petition, No. 17 C 50337 (N.D. Ill. Oct. 18, 2018), and we then denied a certificate of appealability, No. 18-3398 (7th Cir. June 24, 2019). Soon Gakuba requested permission to file a successive § 2254 petition attacking the district court's prior handling of his claims, which we also denied. No. 19-2669 (7th Cir. Sept. 4, 2019). As Gakuba continued to

litigate, we warned him that pursuing frivolous filings would result in sanctions. No. 20-1137 (7th Cir. Oct. 22, 2020). Even so, Gakuba then sought to litigate in other jurisdictions with no obvious link to his case. *See Gakuba v. Doe*, No. 22-CV-1039 (LTS), 2022 WL 561669 (S.D.N.Y. Feb. 22, 2022) (dismissed for lack of jurisdiction); *Gakuba v. Warden*, No. 21-7450, 2022 WL 256342 (4th Cir. Jan. 26, 2022) (same).

Today Gakuba presents a lengthy application for our leave to file a successive petition under 28 U.S.C. § 2244(b), along with a supplement and thousands of pages of attachments. But as he admits, most of the proposed claims repeat the theories from his earlier filings in this circuit, so they are barred by 28 U.S.C. § 2244(b)(1). As to any new theories (concerning ineffective assistance of trial counsel), he invokes no new rule of constitutional law made retroactive by the Supreme Court, *id.* § 2244(b)(2)(A), and does not attempt to show that the alleged new facts were previously undiscoverable, *see id.* § 2244(b)(2)(B). So, we cannot authorize a successive petition.

To be sure, Gakuba's supplement asserts that the State's DNA evidence was fabricated. But the evidence Gakuba relies on is a prosecutor's statement, at a 2012 pretrial hearing, that one swab taken from the victim tested negative for semen while a second tested positive. The prosecutor's statement is not new, does not strongly support any theory of fabrication, and does not otherwise prove innocence.

We therefore **DENY** authorization and dismiss Gakuba's application and motion for electronic filing. Further, in keeping with our prior warning, we impose the following sanction for Gakuba's repetitive litigation:

Gakuba is fined \$500. Until he pays that sum in full to the clerk of this court, any collateral attack on his Illinois conviction or sentence that he files in any court of this circuit will be returned unfiled. Any application for leave to file successive collateral attacks on this conviction or sentence will be deemed denied 30 days after filing unless this court orders otherwise. *See Alexander v. United States*, 121 F.3d 312 (7th Cir. 1997).