

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted August 2, 2024

Decided August 8, 2024

Before

DAVID F. HAMILTON, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 24-2335

LYNDON DAVIS,
Applicant,

v.

TRENT ALLEN,
Respondent.

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

ORDER

For the fourth time, Lyndon Davis applies for leave to file a successive collateral attack on his Indiana conviction and 55-year sentence for murder as an accomplice. We again deny his request, and we impose a sanction.

A federal district court denied Davis's first petition under 28 U.S.C. § 2254 in 2020, and we then denied his request for a certificate of appealability. *Davis v. Zetecy*, No. 1:19-cv-00088-JPH-MJD, 2020 WL 9936705 (S.D. Ind. Apr. 20, 2020); No. 20-1769 (7th Cir. Dec. 1, 2020). We later denied Davis's first three applications under § 2244(b) for our permission to file a successive petition. Nos. 22-1729 (7th Cir. May 17, 2022); 22-2054 (June 29, 2022); 24-2127 (July 23, 2024). The third time, we warned Davis that submitting further frivolous papers could incur sanctions. *See Alexander v. United States*, 121 F.3d 312, 315–16 (7th Cir. 1997).

Now, in a fourth § 2244(b) application, Davis again contends that the prosecutor and state appellate court mischaracterized an eyewitness's testimony, and that counsel was ineffective for failing to contest that point. Yet § 2244(b)(1) bars him from re-raising prior claims. *See Alexander*, 121 F.3d at 314–15. His application also asks us to reconsider our July 2024 ruling on his third application, but reconsideration is barred by § 2244(b)(3)(E). In any event, the factual predicate for the claims was available to Davis before his prior federal applications, so authorization is unavailable under § 2244(b)(2). In short, we may not authorize a successive petition unless Davis points to decisive, previously unavailable proof of innocence or a new and retroactive constitutional rule from the Supreme Court, and he has done neither. *See* 28 U.S.C. § 2244(b)(2).

We therefore must **DENY** authorization and **DISMISS** Davis's application. Further, in keeping with our prior warning, we impose the following **SANCTION** for Davis's repetitive and frivolous litigation:

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