

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**July 17, 2020**

**Christopher M. Wolpert**  
**Clerk of Court**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LEON HENDERSON ASKEW,

Defendant - Appellant.

No. 19-1453  
(D.C. No.1:11-CR-00184-WJM-1)  
(D. Colo.)

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**ORDER\***

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Before **LUCERO, BACHARACH, and MORITZ**, Circuit Judges.

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After a conviction on drug-and-gun charges,<sup>1</sup> Mr. Leon Askew unsuccessfully moved to vacate his sentence. He then filed two requests for a “*Franks* hearing,” which is a hearing on the veracity of an affidavit submitted in order to obtain a warrant. *United States v. Kennedy*, 131 F.3d 1371, 1376 (10th Cir. 1997). The district court denied both requests, and Mr. Askew wants to appeal the second denial of a *Franks* hearing.

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\* This order does not constitute binding precedent except under the doctrines of law of the case, *res judicata*, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

<sup>1</sup> See 18 U.S.C. § 922(g)(i), § 924(c)(1)(A); 21 U.S.C. § 841(a)(1), (b)(1)(C).

To appeal, Mr. Askew needs a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B). We can issue the certificate only if Mr. Askew's appellate argument is reasonably debatable. *Laurson v. Leyba*, 507 F.3d 1230, 1232 (10th Cir. 2007).

In our view, Mr. Askew fails to satisfy this standard. He argues that the district court should have granted his second request for a *Franks* hearing. If this argument is proven, it could support vacatur of the sentence under 28 U.S.C. § 2255. But Mr. Askew has already filed a § 2255 motion and obtained a ruling on the merits. So any new § 2255 motion would be second or successive, and the district court would lack jurisdiction in the absence of authorization to file a second-or-successive § 2255 motion. *In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008) (per curiam).

Mr. Askew hasn't stated any grounds for authorization. 28 U.S.C. § 2255(h). So his appellate argument isn't reasonably debatable and we can't issue a certificate of appealability. Given the absence of a certificate of appealability, we dismiss the appeal. 28 U.S.C. § 2253(c)(1)(B).<sup>2</sup>

Entered for the Court

Robert E. Bacharach  
Circuit Judge

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<sup>2</sup> We grant leave to proceed in forma pauperis.