

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-13814-J

IN RE: LESLIE PARKER,

Petitioner.

Application for Leave to File a Second or Successive
Motion to Vacate, Set Aside,
or Correct Sentence, 28 U.S.C. § 2255(h)

Before WILLIAM PRYOR, ROSENBAUM, and JILL PRYOR, Circuit Judges.

BY THE PANEL:

Pursuant to 28 U.S.C. §§ 2255(h) and 2244(b)(3)(A), Leslie Parker filed a request seeking an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his federal sentence, 28 U.S.C. § 2255. On July 7, 2016, this Court granted his request. Subsequently, however, one member of the panel learned of a conflict requiring recusal. As a result, we must vacate and decide anew Parker's request to file a successive § 2255 motion in district court.

In the intervening time between the July 7 order and now, we issued *In re Baptiste*, No. 16-13959 (11th Cir. July 13, 2016). Under *In re Baptiste*, a later request of a prisoner who has previously filed a request for authorization to file a second or successive petition based on the same claim, must be dismissed. Because Parker has already filed a request presenting a claim based on *Johnson v. United States*, 576 U.S. ___, 135 S. Ct. 2551 (2015), we must dismiss his current request, regardless of its merit, since it raises the same claim as his first request.

APPLICATION DISMISSED.

ROSENBAUM, Circuit Judge, with whom JILL PRYOR, Circuit Judge joins, concurring:

I agree that *In re Baptiste*, No. 16-13959, ___ F.3d ___, 2016 WL 3752118 (11th Cir. July 13, 2016), requires us to dismiss Leslie Parker's request for authorization to file a second or successive habeas petition. I write separately because I continue to believe that *Baptiste's* interpretation of 28 U.S.C. § 2244(b)(1) to prohibit us from considering a successive request for authorization to file a second or successive habeas petition where a prior request for authorization raising the same claim was denied, is incorrect as a matter of law. *See In re Jones*, No. 16-14053, ___ F.3d ___, 2016 WL 4011143 (11th Cir. July 27, 2016). Section 2244(b)(1) simply contains no such limitation. *See id.* As for § 2244(b)(3)(E), it likewise says nothing about successive requests for authorization. And, where we know that, as a matter of law, we have incorrectly denied a prior request for authorization under the abbreviated 30-day gatekeeping procedure required by AEDPA, we should be able to correct our error and provide the petitioner with a real opportunity to have his case considered on the merits. Anything less flirts with violating the Suspension Clause.