

OCT 15 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOHN F. FRIEDLANDER,</p> <p>Petitioner,</p> <p>v.</p> <p>UNITED STATES OF AMERICA,</p> <p>Respondent.</p>
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No. 13-70918

ORDER*

Application to File Second or Successive
Petition Under 28 U.S.C. § 2255

Submitted October 8, 2013**
Seattle, Washington

Before: TASHIMA, GRABER, and MURGUIA, Circuit Judges.

John Friedlander was charged as an adult in federal district court for a murder committed when he was sixteen. On January 20, 1988, he pleaded guilty to Second Degree Murder in violation of 18 U.S.C. § 1111(a), and Assault with Intent

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this motion suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2)(C).

to Commit Murder in violation of 18 U.S.C. § 113(a). He was sentenced to life in prison for the murder charge, and a concurrent term of twenty years for the assault charge. In 1992, the district court denied his first *pro se* motion under 28 U.S.C. § 2255. Friedlander has now filed an application for leave to file a second or successive motion under § 2255. We have jurisdiction under 28 U.S.C. § 2255(h).

We may authorize the filing of a second or successive motion under § 2255 if, among other things, the application makes a prima facie showing that the motion would “contain . . . a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.” 28 U.S.C. § 2255; 28 U.S.C. § 2244(b)(C). Friedlander contends that his sentence is contrary to *Miller v. Alabama*, 132 S. Ct. 2455 (2012), which held that a mandatory sentence of life without the possibility of parole for a juvenile homicide offender violates the Eighth Amendment. We need not decide whether *Miller* announced a new, retroactive rule of constitutional law because, even if it did, Friedlander’s application would fail.

Miller is inapplicable because Friedlander was not sentenced to life without parole. Friedlander admits that he “has seen the parole board approximately 8 time[s] . . . and [has] a forth coming [sic] hearing in February of 2014.”

The application to file a second or successive motion under § 2255 is

DENIED.