

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 10 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ANTHONY MCGEE,

No. 18-72243

Applicant,

v.

ORDER*

UNITED STATES OF AMERICA,

Respondent.

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

Argued and Submitted November 13, 2019
San Francisco, California

Before: THOMAS, Chief Judge, and TASHIMA and WARDLAW, Circuit
Judges.

The application for authorization to file a second or successive 28 U.S.C. § 2255 motion in the district court is denied. The applicant seeks to rely on *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018), but has not demonstrated that even if *McCoy* were held to be retroactive to cases on collateral review, it would govern the facts of his case. The applicant has therefore not made a prima facie showing under 28

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

U.S.C. § 2255(h) of “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.”

Any pending motions are denied as moot.

No further filings will be entertained in this case.

DENIED.