

March 1, 2012

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

In re:

TORRIANO ADARRYLL DAVIS,

Movant.

No. 12-1037
(D.C. No. 1:06-CV-01746-ZLW)
(D. Colo.)

ORDER

Before **MURPHY, HARTZ, and MATHESON**, Circuit Judges.

Torriano Adarryll Davis, proceeding pro se, moves for authorization to file a second or successive 28 U.S.C. § 2254 habeas corpus petition. Because he seeks to assert claims that he has already asserted, we deny authorization.

In 1997, Mr. Davis was convicted in the Arapahoe County District Court, Colorado, Case No. 96-CR-1450, of various crimes for which he is serving a 124-year sentence. He filed his first § 2254 petition in federal court in 2006 in which he asserted that his enhanced sentence was illegal. The court dismissed the petition as time-barred under 28 U.S.C. § 2244(d)(1)(A), (D). Mr. Davis did not appeal.

Mr. Davis has now filed a motion seeking authorization to file a second or successive § 2254 habeas petition that challenges the legality of his enhanced

sentence. Under § 2244(b)(1), a claim presented in a previous § 2254 petition must be dismissed. “The dismissal of [Mr. Davis’s] first habeas petition as time-barred was a decision on the merits, and any later habeas petition challenging the same conviction is second or successive.” *In re Rains*, 659 F.3d 1274, 1275 (10th Cir. 2011). Mr. Davis cannot proceed with a claim that he already presented. *See id.*

We therefore DENY authorization. The denial of authorization “shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.” 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court,

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", with a long horizontal flourish extending to the right.

ELISABETH A. SHUMAKER, Clerk