

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DONALD BARNES

CIVIL ACTION

VERSUS

NO. 18-5128

DARRYL VANNOY

SECTION "R" (5)

ORDER AND REASONS

Before the Court is Donald Barnes's Motion for Relief from Judgment from the Fifth Circuit's denial of authorization to pursue a successive 28 U.S.C. § 2254 habeas corpus application.¹

Barnes is serving a sentence of life in prison imposed by the Orleans Parish Criminal District Court on August 21, 2000, after a jury convicted him of aggravated rape, forcible rape, and aggravated crime against nature.² After exhausting his state remedies, Barnes filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254.³ His petition was denied on November 2, 2007.⁴ Barnes then filed a second petition, which was considered a second or successive petition under 28 U.S.C. § 2244, and accordingly was transferred to the Fifth Circuit for Barnes to seek

¹ R. Doc. 10.

² R. Doc. 10-1 at 1.

³ Case No. 06-2827, R. Doc. 1.

⁴ Case No. 06-2827, R. Doc. 11.

authorization as required under 28 U.S.C. § 2244(b)(3)(A).⁵ Barnes failed to comply with the Fifth Circuit requirements, and his request for authorization was dismissed on August 20, 2014.⁶ On June 18, 2018, Barnes filed a third petition for a writ of habeas corpus.⁷ The Court construed his petition as a second or successive petition and transferred it to the Fifth Circuit so that Barnes could seek authorization.⁸ On August 14, 2018, the Fifth Circuit denied authorization.⁹ Barnes now seeks relief from the Fifth Circuit’s denial of authorization under Federal Rule of Civil Procedure 60(b).¹⁰

This Court has no authority to review authorization decisions of the Fifth Circuit under Rule 60(b) or any other means. Motions for authorization of second or successive petitions may be made only “in the appropriate court of appeals,” and denials of authorization are not appealable. 28 U.S.C. § 2244(b)(3)(A); 28 U.S.C. § 2244(b)(3)(E) (“The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of

⁵ Case No. 14-1217, R. Doc. 3.

⁶ Case No. 14-1217, R. Doc. 3.

⁷ R. Doc. 5.


⁸ R. Doc. 8.

⁹ R. Doc. 10-1 at 71.

¹⁰ R. Doc. 10.

a petition for rehearing or for a writ of certiorari.”). Barnes’ motion for relief from judgment is therefore DENIED.

New Orleans, Louisiana, this 7th day of February, 2019.



SARAH S. VANCE
UNITED STATES DISTRICT JUDGE