

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 18 2019

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

BENNY STEWART,

Applicant,

v.

DAN O'FALLON,

Respondent.

No. 18-72483

ORDER

Before: LEAVY, BEA, and N.R. SMITH, Circuit Judges.

The applicant's motion to amend the application for authorization to file a second or successive 28 U.S.C. § 2254 habeas petition (Docket Entry No. 2) is granted.

In this application, as supplemented by Docket Entry Nos. 2 and 3, the applicant alleges that the state trial judge presiding over his criminal proceedings should have recused himself. He raised the same claim in his previous application filed in case number 18-71466, which this court denied on August 27, 2018. The court therefore declines to entertain this claim and denies the application.

All pending motions are denied as moot.

No further filings will be entertained in this case.

DENIED.

Appendix D

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

AUG 27 2018

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

BENNY STEWART,

No. 18-71466

Applicant,

ORDER

v.

BOB EDWARDS,

Respondent.

Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

The application for authorization to file a second or successive 28 U.S.C.

§ 2254 habeas corpus petition in the district court is denied. The applicant has not made a prima facie showing under 28 U.S.C. § 2244(b)(2) that:

(A) the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

Any pending motions are denied as moot.

No further filings will be entertained in this case.

DENIED.