

[APPENDIX]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-50561



In re: ELVIS RIVERA CRUZ,

A True Copy

Certified order issued Oct 24, 2017

Movant

Stacy W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

Motion for an order authorizing
the United States District Court for the
Western District of Texas to consider
a successive 28 U.S.C. § 2254 application

Before DAVIS, DENNIS, and GRAVES, Circuit Judges.

PER CURIAM:

Elvis Rivera Cruz, Texas prisoner # 1835853, has applied for authorization to file a second or successive 28 U.S.C. § 2254 application challenging his convictions for aggravated sexual assault of a child. Cruz wishes to assert claims of ineffective assistance of trial counsel based on counsel's alleged failure to challenge his indictment on double jeopardy grounds, failure to object to evidence, and assistance with the modification of a transcript of his confession. He also wishes to assert a claim that his state habeas counsel was ineffective in his first state habeas proceeding. Cruz contends that he is entitled to raise his claims based on the Supreme Court's decisions in *Trevino v. Thaler*, 133 S. Ct. 1911 (2013), and *Martinez v. Ryan*, 566 U.S. 1 (2012).

To obtain authorization, Cruz must make a prima facie showing either (1) that his claims rely on "a new rule of constitutional law, made retroactive

to cases on collateral review by the Supreme Court, that was previously unavailable,” or (2) that the factual predicate for his claims “could not have been discovered previously through the exercise of due diligence,” and the underlying facts, “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.” 28 U.S.C. §§ 2244(b)(2), (b)(3)(A), (b)(3)(C). Cruz’s claims do not meet those criteria. *See Adams v. Thaler*, 679 F.3d 312, 323 n.6 (5th Cir. 2012); *see also In re Sepulvado*, 707 F.3d 550, 554 (5th Cir. 2013).

Accordingly, IT IS ORDERED that Cruz’s motion for authorization to file a successive § 2254 application is DENIED.

**Additional material
from this filing is
available in the
Clerk's Office.**