

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted October 25, 2018
Decided November 21, 2018

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DANIEL A. MANION, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

No. 18-3379

FRANCISCO NARVAEZ,
Applicant,

v.

On Motion for an Order Authorizing the
District Court to Entertain a Second or
Successive Motion for Collateral Review.

UNITED STATES OF AMERICA,
Respondent.

ORDER

Francisco Narvaez applies for leave to file a successive collateral attack under 28 U.S.C. §§ 2244(b) and 2255(h). But because he has not yet pursued a *first* collateral attack all the way to a final decision in the district court, his application is premature.

Narvaez is serving 72 months' imprisonment for three drug crimes. *United States v. Narvaez*, 704 F. App'x 597 (7th Cir. 2017). While his direct appeal was pending here, he moved in the district court to vacate the criminal judgment under § 2255. Not surprisingly, the judge dismissed the motion without prejudice to later re-filing it once we finished with the direct appeal. 1:17-cv-04439 (N.D. Ill. June 15, 2017).

But when his direct appeal ended in failure, Narvaez returned to us with an application for leave to file a successive collateral attack. We dismissed that application without prejudice because Narvaez had not yet pursued a § 2255 action to a final judgment in the district court. No. 18-1674 (7th Cir. Apr. 19, 2018); *see also* No. 18-3031 (7th Cir. Oct. 15, 2018) (dismissing additional application without prejudice for failure to include proposed claims); No. 17-3620 (7th Cir. Jan. 23, 2018) (same). Cf. generally *Pavlovsky v. VanNatta*, 431 F.3d 1063 (7th Cir. 2005) (collateral attacks dismissed without prejudice to re-filing do not count for purposes of § 2244(b)).

So, back in the district court, Narvaez filed a new § 2255 motion in April 2018. And that motion remains pending in No. 18 C 3629 (N.D. Ill.). Yet Narvaez has now followed up with another application for our leave to file a “second or successive” collateral attack. Until a final decision is rendered for the first time in a § 2255 action, the rule against second or successive motions is not at issue, and our authorization to file amendments to the pending § 2255 motion is not required. There may be other obstacles to amending the pending § 2255 motion, but none involves the need for authorization from us. While Narvaez awaits a final decision from the district court, he should not send us any further applications.

For these reasons, we dismiss Narvaez’s application without prejudice.