

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 19-2806

Stephen Henderson

Plaintiff - Appellant

v.

United States of America

Defendant - Appellee

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:19-cv-01788-CAS)

JUDGMENT

Before GRUENDER, BENTON, and GRASZ, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed. The motion to proceed on appeal in forma pauperis is denied as moot.

March 17, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Appendix A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

STEPHEN HENDERSON,)
)
)
Movant,)
)
)
v.) No. 4:19-CV-1788 CAS
)
)
UNITED STATES OF AMERICA,)
)
)
)
Respondent.)

MEMORANDUM AND ORDER

This matter is before the Court on pro se movant Stephen Henderson's motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence. The motion is a "second or successive motion" within the meaning of 28 U.S.C. §§ 2244 and 2255 but has not been certified by the United States Court of Appeals for the Eighth Circuit as required by the AEDPA. As a result, the motion will be denied.

On July 2, 2009, movant was convicted by a jury of one count of conspiracy to distribute and possess with the intent to distribute in excess of five kilograms of cocaine and one count of distribution of in excess of five kilograms of cocaine. See United States v. Henderson, No. 4:08-CV-187-CAS (E.D. Mo. Jul. 2, 2009) (Doc. 207). As a result of the conviction, the Court sentenced movant to life imprisonment. (Doc. 228). Movant appealed his conviction and sentence, and the United States Court of Appeals for the Eighth Circuit affirmed.

Movant filed his first motion to vacate pursuant to 28 U.S.C. § 2255 on April 24, 2012. This Court held an evidentiary hearing on the motion, and subsequently denied the motion. On November 2, 2016, the Eighth Circuit denied movant's application for a certificate of appealability.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

STEPHEN HENDERSON,)
)
)
Movant,)
)
)
v.) No. 4:19-CV-1788 CAS
)
)
UNITED STATES OF AMERICA,)
)
)
Respondent.)

ORDER OF DISMISSAL

In accordance with the memorandum and order issued on this date and incorporated herein,
IT IS HEREBY ORDERED that movant's motion to vacate, set aside, or correct illegal
sentence pursuant to 28 U.S.C. § 2255 is **DENIED and DISMISSED as SUCCESSIVE**.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 28th day of June, 2019.

In the instant motion, movant claims that the United States Supreme Court's decision in Carpenter v. United States, 138 S. Ct. 2206 (2018), invalidates his conviction. In Carpenter, the Supreme Court held that the government must obtain a search warrant supported by probable cause before acquiring a defendant's cell-site location records. Movant states that his cell-site location records were "critical for the government to be able to investigate and prosecute [him]," and because the government acquired these records without a search warrant, they were illegally obtained in light of the Carpenter decision. For this reason, movant asks to Court to grant his motion to vacate.

Under 28 U.S.C. § 2255(h):

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

...

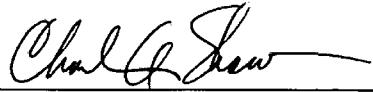
(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

Absent certification from the United States Court of Appeals, this Court lacks authority under § 2255 to grant movant's requested relief. As a result, the motion shall be denied.

Accordingly,

IT IS HEREBY ORDERED that movant's motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence is **DENIED and DISMISSED as SUCCESSIVE**. [Doc. 1]

An Order of Dismissal will accompany this Memorandum and Order.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 28th day of June, 2019.

Appendix B

Henderson v. United States

United States District Court for the Eastern District of Missouri, Eastern Division

June 28, 2019, Decided; June 28, 2019, Filed

No. 4:19-CV-1788 CAS

Reporter

2019 U.S. Dist. LEXIS 108532 *

Judges: CHARLES A. SHAW, UNITED STATES DISTRICT JUDGE.

STEPHEN HENDERSON, Movant, v. UNITED STATES OF AMERICA, Respondent.

Opinion by: CHARLES A. SHAW

Subsequent History: Motion denied by Henderson v. United States, 2019 U.S. Dist. LEXIS 156645 (E.D. Mo., Sept. 13, 2019)

Opinion

MEMORANDUM AND ORDER

Prior History: United States v. Henderson, 613 F.3d 1177, 2010 U.S. App. LEXIS 15759 (8th Cir. Mo., July 30, 2010)

This matter is before the Court on pro se movant Stephen Henderson's motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence. The motion is a "second or successive motion" within the meaning of 28 U.S.C. §§ 2244 and 2255 but has not been certified by the United States Court of Appeals for the Eighth Circuit as required by the AEDPA. As a result, the motion will be denied.

Core Terms

movant, sentence, Appeals, vacate, records, search warrant, certificate, distribute, cell-site, kilograms, cocaine

Counsel: [*1] Stephen Henderson, Plaintiff, Pro se, COLEMAN, FL.

For USA, Defendant: Tiffany G. Becker, LEAD ATTORNEY, OFFICE OF U.S. ATTORNEY, St. Louis, MO.

On July 2, 2009, movant was convicted by a jury of one count of conspiracy to distribute and possess with the intent to distribute in excess of five kilograms of cocaine and one count of distribution of in excess of five kilograms of cocaine. See United States v. Henderson, No. 4:08-CV-187-CAS (E.D. Mo. Jul. 2, 2009) (Doc. 207). As a result of the conviction, the Court sentenced movant to life imprisonment. (Doc. 228). Movant appealed his conviction and sentence, and the United States Court of Appeals for the Eighth Circuit affirmed.

Movant filed his first motion to vacate pursuant to 28 U.S.C. § 2255 on April 24, 2012. This Court

held [*2] an evidentiary hearing on the motion, and subsequently denied the motion. On November 2, 2016, the Eighth Circuit denied movant's application for a certificate of appealability.

In the instant motion, movant claims that the United States Supreme Court's decision in Carpenter v. United States, 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018), invalidates his conviction. In Carpenter, the Supreme Court held that the government must obtain a search warrant supported by probable cause before acquiring a defendant's cell-site location records. Movant states that his cell-site location records were "critical for the government to be able to investigate and prosecute [him]," and because the government acquired these records without a search warrant, they were illegally obtained in light of the Carpenter decision. For this reason, movant asks to Court to grant his motion to vacate.

Under 28 U.S.C. § 2255(h):

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

...
(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

Absent certification from the United States Court of Appeals, this Court lacks authority under § 2255 to grant movant's requested [*3] relief. As a result, the motion shall be denied.

Accordingly,

IT IS HEREBY ORDERED that movant's motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence is **DENIED and DISMISSED as SUCCESSIVE**. [Doc. 1]

An Order of Dismissal will accompany this Memorandum and Order.

/s/ Charles A. Shaw

CHARLES A. SHAW

UNITED STATES DISTRICT JUDGE

Dated this 28th day of June, 2019.

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