

Appendix

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United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted May 19, 2022

Decided May 27, 2022

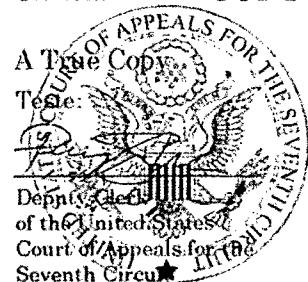
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Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*



No. 22-1887

MATTHEW LEE STASZAK,
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

Matthew Staszak pleaded guilty to four crimes, for which he was sentenced to 240 months' imprisonment: sexual exploitation of a minor, 18 U.S.C. § 2251(a), (e); traveling with intent to engage in illicit sexual conduct, *id.* § 2423(b) (two counts); and failure to appear at a required hearing, *id.* § 3146(a)(1). His plea agreement expressly waived direct and collateral review. Staszak, accordingly, did not appeal. Yet he did move under 28 U.S.C. § 2255 to vacate the judgment. But the district court denied the motion, and we denied a certificate of appealability. *Staszak v. United States*, No. 3:15-cv-20-JPG (S.D. Ill. Feb. 21, 2020); No. 20-1381 (7th Cir. Nov. 4, 2020).

Staszak now seeks leave to file a successive motion under 28 U.S.C. §§ 2244(b) and 2255(h). We deny that request. Even setting aside the collateral-attack waiver, none

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of Staszak's claims involves new and compelling evidence of innocence or relies on a new and retroactive rule of constitutional law, so none satisfies § 2255(h).

Staszak first asserts that at the time of the charged crimes, he would not have possessed the specific video-capable cellphone mentioned in the indictment and plea proceedings. That phone is a Motorola Droid X2 with serial number SJUG6250. The charges refer to events in June and July 2011, but Staszak now points to receipts (supposedly unearthed only recently by his father) for phone purchases in October 2011. These documents, though, do not prove that he purchased the Droid X2 at issue in October 2011. None of these receipts lists that phone's serial number; one refers to a Droid X phone (a predecessor to the X2); another refers to an LG Revere phone. This does not show that Staszak's admissions in the plea proceedings were false. In any event, even if his admissions about either the phone used or the relevant timeline were mistaken, that would not mean Staszak is substantively innocent.

Staszak also asserts that the government hid from him a forensic report opining that he had not recorded a sexually explicit video on his cellphone. He does not attach that report to his application. Further, Staszak confessed to making the video, and the government intercepted phone conversations in which he told the minor he had deleted the video. Reasonable jurors therefore would not be required to credit the supposed forensic report's opinion that no video was made.

Next, Staszak says he has medical records casting doubt on the government's theory that he gave the victim chlamydia, a sexually transmitted disease. But even if so, that would not mean he was innocent of the charged acts. The same goes for Staszak's observation that the then-United States Attorney for the Southern District of Illinois had ethical troubles of his own (which were not obviously connected to Staszak's case).

The remainder of Staszak's claims likewise are based on alleged errors involving no new evidence of innocence or new constitutional rules. For example, Staszak says that one count of sexual exploitation is invalid because the conduct occurred after the victim turned 16. Setting aside the fact that the statute criminalizes various sexual acts with a person under the age of 18, *see* 18 U.S.C. §§ 2423(f)(1); 2246(a)(2)(A)–(C), this contention does not depend on any new evidence or change in law.

Accordingly, Staszak's motion to supplement his application is granted to the limited extent that the court reviewed his proposed exhibit. And we deny authorization and dismiss the application.

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