

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

FILED  
United States Court of Appeals  
Tenth Circuit

July 14, 2022

Christopher M. Wolpert  
Clerk of Court

In re: ARTHUR J. LOMAX,  
  
Movant.

(D.C. No. \_\_\_\_\_  
(D. Colo.)

ORDER

Before **TYMKOVICH**, Chief Judge, **McHUGH** and **MORITZ**, Circuit Judges.

Arthur J. Lomax, a Colorado prisoner proceeding pro se,<sup>1</sup> seeks authorization to file a second or successive habeas application under 28 U.S.C. § 2254. Because he has not met the requisite conditions under 28 U.S.C. § 2244(b), we deny authorization.

In 2006, Mr. Lomax was convicted in Colorado state court of sexual assault and unlawful sexual contact. He was sentenced to six years to life in prison. In an unpublished opinion, the Colorado Court of Appeals affirmed his conviction on the sexual assault charge, but vacated his conviction for unlawful sexual contact.

Mr. Lomax filed his first § 2254 application in 2011. The district court dismissed it as untimely under § 2244(d), and we declined to issue a certificate of appealability (“COA”). In 2016, he filed a second § 2254 application, which the district court also denied. We again declined to issue a COA. Finally, in February 2022, Mr. Lomax filed a

<sup>1</sup> We liberally construe pro se pleadings, but we do not make arguments for pro se litigants or otherwise advocate on their behalf. *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

## APPENDIX A

petition under 28 U.S.C. § 2241, again challenging his conviction. Construing his petition as a request for release from custody, the district court treated the petition as an unauthorized second or successive habeas petition under § 2254, and dismissed it.

Mr. Lomax has appealed that dismissal in a separate appeal.

Mr. Lomax now moves for authorization to file yet another § 2254 application. Such an application cannot proceed in the district court without first being authorized by this court. *See id.* § 2244(b)(3). We may not authorize a new claim unless the prisoner shows:

- “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,” *id.* § 2244(b)(2)(A), or
- “the factual predicate for the claim could not have been discovered previously through the exercise of due diligence” and “the facts underlying the claim . . . 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,” *id.* § 2244(b)(2)(B).

Mr. Lomax must make a *prima facie* showing that he can satisfy these requirements. *See id.* § 2244(b)(3)(C); *Case v. Hatch*, 731 F.3d 1015, 1028-29 (10th Cir. 2013).

Mr. Lomax disclaims any reliance on the “new rule of constitutional law” prong. Instead, he claims that under § 2244(b)(2)(B), he recently discovered evidence that in the Colorado Revised Statutes published from 2005 to 2007, the statutes under which he was convicted lack an enacting clause and are therefore void. Mr. Lomax attempts to

## APPENDIX A

characterize this claim as a violation of his rights under the United States Constitution, but his argument is purely a matter of state law.<sup>2</sup> “[C]laims of state law violations are not cognizable in a federal habeas action.” *Montez v. McKinna*, 208 F.3d 862, 865 (10th Cir. 2000).

Mr. Lomax has not satisfied the requirements of § 2244(b)(2)(B), and we therefore deny his motion for authorization to file a second or successive habeas application. This denial of authorization “shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.” 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

---

<sup>2</sup> It is true that the Colorado Constitution specifies that “[t]he style of the laws of this state shall be: ‘Be it enacted by the General Assembly of the State of Colorado.’” Colo. Const. art. V, § 18. But the Colorado Court of Appeals explained that “the enacting clause as published in the Session Laws of Colorado satisfies [this] mandate . . . and its underlying policy. Consequently, the omission of the enacting clause from the Colorado Revised Statutes does not render the statutes unconstitutional.” *People v. Washington*, 969 P.2d 788, 790 (Colo. App. 1998).

APPENDIX B

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 22-cv-00490-LTB-GPG

ARTHUR J. LOMAX,

Applicant,

v.

JEFF LONG, Warden,

Respondent.

---

JUDGMENT

---

Pursuant to and in accordance with the Order of Dismissal entered by Lewis T. Babcock, Senior District Judge, on July 26, 2022, it is hereby

ORDERED that Judgment is entered in favor of Respondent and against Applicant.

DATED at Denver, Colorado, this 26<sup>th</sup> day of July, 2022.

FOR THE COURT,

JEFFREY P. COLWELL, Clerk

By: s/ S. Phillips,  
Deputy Clerk

APPENDIX B

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 22-cv-00490-LTB-GPG

ARTHUR J. LOMAX,

Applicant,

v.

JEFF LONG, Warden,

Respondent.

---

ORDER

---

This matter is before the Court on the Recommendation of United States Magistrate Judge filed May 17, 2022 (ECF No. 15). Mr. Lomax filed timely written objections to the Recommendation (ECF No. 16). On June 6, 2022, Mr. Lomax filed a purported appeal of the May 17 Recommendation with the Tenth Circuit Court of Appeals. (ECF No. 17). The Tenth Circuit dismissed the appeal for lack of appellate jurisdiction on July 15, 2022. (ECF No. 22). The Court has now reviewed the Recommendation *de novo* in light of the file and record in this case. On *de novo* review the Court concludes that the Recommendation is correct.

Accordingly, for the foregoing reasons, it is

ORDERED that the Recommendation of United States Magistrate Judge (ECF No. 15) is accepted and adopted. It is

FURTHER ORDERED that claim one of the Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (ECF No. 5), which the Court has construed as

## APPENDIX B

arising under 28 U.S.C. § 2254, is DISMISSED WITHOUT PREJUDICE for lack of statutory jurisdiction. It is

FURTHER ORDERED that claim two of the Application is DISMISSED as not cognizable under 28 U.S.C § 2241. It is

FURTHER ORDERED that no certificate of appealability will issue because Applicant has not made a substantial showing that jurists of reason would debate the correctness of this procedural ruling or that his constitutional rights were violated. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this dismissal would not be taken in good faith. It is

FURTHER ORDERED that all pending motions are denied.

DATED: July 26, 2022

BY THE COURT:

s/Lewis T. Babcock  
LEWIS T. BABCOCK, Senior Judge  
United States District Court

# APPENDIX C

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: January 27, 2022
Original Proceeding District Court, City and County of Denver, 2005CR3972	
<b>Plaintiff-Appellee:</b>  The People of the State of Colorado,  v.  <b>Defendant-Appellant:</b>  Arthur James Lomax.	Supreme Court Case No: 2021SA361
ORDER OF COURT	

Upon consideration of the Motion for Appointment of Counsel and the Petition for Writ of Habeas Corpus filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that said Motion for Appointment of Counsel shall be, and the same hereby is, DENIED. There is no right to appointment of counsel in a habeas corpus proceeding. *See Brinklow v. Riveland*, 773 P.2d 517, 521 (Colo. 1989).

IT IS FURTHER ORDERED that the Petition for Writ of Habeas Corpus shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, JANUARY 27, 2022.

# APPENDIX D

DISTRICT COURT, DENVER COUNTY, COLORADO		DATE FILED: June 18, 2021
Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202		
THE PEOPLE OF THE STATE OF COLORADO v. Defendant(s) ARTHUR JAMES LOMAX		<b>△ COURT USE ONLY △</b> Case Number: 2005CR3972 Division: 4H      Courtroom:
<b>Order: Motion to Vacate, Set Aside, And/ Or Set Aside for the Lack of Subject Matter Jurisdiction</b>		

The motion/proposed order attached hereto: DENIED.

Defendants motion has previously been denied. This motion raises no new issues.

Issue Date: 6/18/2021



BRIAN R WHITNEY  
District Court Judge



# APPENDIX D

DISTRICT COURT, DENVER COUNTY, COLORADO		DATE FILED: June 18, 2021
Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202		
THE PEOPLE OF THE STATE OF COLORADO v. <b>Defendant(s)</b> ARTHUR JAMES LOMAX		<b>△ COURT USE ONLY △</b> Case Number: 2005CR3972 Division: 4H      Courtroom:
<b>Order:</b> Habeas Corpus 28 U.S.C. 2241/28 U.S.C. 2254/ Petition for Relief/Petition for Writ w/attach		

The motion/proposed order attached hereto: DENIED.

Issue Date: 6/18/2021



BRIAN R WHITNEY  
District Court Judge