

Appendix C

No. 09-3108

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: JAMES SUDBERRY,

Movant.

ORDER

FILED
Nov 09, 2009
LEONARD GREEN, Clerk

Before: GUY, RYAN, and MCKEAGUE, Circuit Judges.

James Sudberry, an Ohio prisoner proceeding pro se, moves this court for an order authorizing the district court to consider a second or successive petition for a writ of habeas corpus relief under 28 U.S.C. § 2254. *See* 28 U.S.C. § 2244. The state has filed a response.

On October 7, 2000, a jury convicted Sudberry of murder. Sudberry was sentenced to serve fifteen years to life in prison. The Ohio Court of Appeals, Twelfth Appellate District, affirmed Sudberry's conviction on November 13, 2001. The Ohio Supreme Court denied Sudberry's motion for leave to file a delayed appeal on July 31, 2002. Sudberry did not pursue post-conviction relief.

On March 27, 2003, Sudberry filed a § 2254 petition for a writ of habeas corpus, asserting nine grounds for relief. On April 29, 2008, the district court dismissed with prejudice eight of Sudberry's grounds for relief. An evidentiary hearing was held on the last remaining claim. On February 4, 2009, the district court dismissed the final claim with prejudice.

On February 3, 2009, Sudberry filed an application for permission to file a second or successive § 2254 habeas petition. In this application, Sudberry reasserts the claims decided in his first § 2254 habeas petition, including: 1) whether there were mitigating circumstances to a lesser or negligent homicide; 2) whether he stated a valid claim of self-defense; and 3) whether his counsel rendered ineffective assistance.

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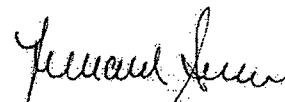
- 2 -

To be entitled to an order authorizing the district court to consider a second habeas corpus petition, the movant must make a *prima facie* showing of: (1) a new rule of constitutional law made retroactive to cases on collateral review by the Supreme Court that was previously unavailable, or (2) newly discovered evidence which could not have been discovered previously through the exercise of due diligence and which would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the applicant guilty. *See* 28 U.S.C. § 2244(b)(2), (b)(3)(C); *see In re Green*, 144 F.3d 384, 388 (6th Cir. 1998).

Sudberry's motion does not satisfy either requirement for obtaining permission to file a second or successive habeas petition. First, Sudberry's arguments do not rely on a new rule of constitutional law made retroactive to cases on collateral review by the Supreme Court that was previously unavailable.¹¹ Second, Sudberry has not established that any of his claims involve newly discovered evidence that would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found him guilty.¹¹ - this one

Accordingly, we deny the motion for an order authorizing a second or successive habeas petition.

ENTERED BY ORDER OF THE COURT



Leonard Green
Clerk

Appendix D

General Docket

United States Court of Appeals for the Sixth Circuit

Court of Appeals Docket #: 19-4129

Docketed: 11/20/2019

In re: James Sudberry

Appeal From: Southern District of Ohio at Cincinnati

Fee Status: not applicable

Case Type Information:

- 1) Original Proceeding
- 2) Successive Habeas Corpus
- 3) null

(DUE DILIGENCE)

Originating Court Information:

District: 0648-1 : 1:19-cv-00230

Trial Judge: Michael R. Barrett, U.S. District Judge

Prior Cases:

09-3108 **Date Filed:** 02/03/2009 **Date Disposed:** 11/09/2009 **Disposition:** Mandamus
Granted

11-3260 **Date Filed:** 03/14/2011 **Date Disposed:** 02/23/2012 **Disposition:** Motions Panel,
Denied

12-3499 **Date Filed:** 05/01/2012 **Date Disposed:** 03/28/2013 **Disposition:** Motions Panel,
Other

14-3236 **Date Filed:** 03/20/2014 **Date Disposed:** 09/26/2014 **Disposition:** Motions Panel,
Denied

14-3622 **Date Filed:** 06/27/2014 **Date Disposed:** 09/26/2014 **Disposition:** Motions Panel,
Denied

14-4051 **Date Filed:** 10/27/2014 **Date Disposed:** 06/01/2015 **Disposition:** Motions Panel,
Denied

14-4272 **Date Filed:** 12/29/2014 **Date Disposed:** 05/29/2015 **Disposition:** Motions Panel,
Denied

15-4320 **Date Filed:** 12/02/2015 **Date Disposed:** 06/29/2016 **Disposition:** Motions Panel,
Denied

16-3926 **Date Filed:** 08/15/2016 **Date Disposed:** 02/13/2017 **Disposition:** Motions Panel,
Denied

17-3266 **Date Filed:** 03/20/2017 **Date Disposed:** 09/05/2017 **Disposition:** Motions Panel,
Denied