

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

January 28, 2025

Lyle W. Cayce  
Clerk

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No. 24-50294

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

LARRY WAYNE KIMES,

*Defendant—Appellant.*

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Application for Certificate of Appealability  
the United States District Court  
for the Western District of Texas  
USDC No. 5:24-CV-125  
USDC No. 5:12-CR-886-2

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UNPUBLISHED ORDER

Before SMITH, GRAVES, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

Larry Wayne Kimes, former federal prisoner # 45087-177, moves for a certificate of appealability (COA) to appeal the dismissal of his 28 U.S.C. § 2255 motion challenging his conviction for tax conspiracy and conspiracy to commit mail fraud. The district court construed Kimes's Federal Rule of Civil Procedure 60(b) motion as an unauthorized successive § 2255 motion

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and dismissed it for lack of jurisdiction. Kimes makes an alternative request for authorization to file a second or successive § 2255 motion in district court. His motion for leave to file an amended COA motion is DENIED.

With respect to the request for a COA, Kimes must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Because the district court denied relief on procedural grounds, he must show that “jurists of reason would find it debatable whether the [motion] states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

To receive authorization to file a successive § 2255 motion, Kimes must make a prima facie showing that his § 2255 claims rely on either “newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found [him] guilty of the offense” or “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.” 28 U.S.C. § 2255(h); see 28 U.S.C. § 2244(b)(3)(C); *United States v. Hanner*, 32 F.4th 430, 434 (5th Cir. 2022).

Kimes has not made the necessary showing with regard to either of his motions. Accordingly, his motions for a COA, for leave to proceed in forma pauperis, and for authorization to file a successive § 2255 motion are DENIED.

United States Court of Appeals  
for the Fifth Circuit

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No. 24-50294

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United States Court of Appeals  
Fifth Circuit

**FILED**

March 28, 2025

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

LARRY WAYNE KIMES,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 5:24-CV-125

---

UNPUBLISHED ORDER

Before SMITH, GRAVES, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:

This panel previously DENIED motions for a certificate of appealability, to amend certificate of appealability and motion for authorization to file successive, for authorization to file successive, and for leave to proceed in forma pauperis. The panel has considered Appellant's motion for reconsideration.

IT IS ORDERED that the motion is DENIED.