

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

DEC 11 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

TAUMU JAMES,

No. 20-73168

Applicant,

v.

ORDER

WARREN L. MONTGOMERY, Warden,

Respondent.

Before: THOMAS, Chief Judge, HURWITZ and BADE, Circuit Judges.

As an initial matter, contrary to the applicant's contention, his claims are subject to 28 U.S.C. § 2244(b). *See Brown v. Muniz*, 889 F.3d 661, 668 (9th Cir. 2018) (a claim is subject to second or successive gatekeeping where the factual predicate existed at the time of the first challenge); *United States v. Buenrostro*, 638 F.3d 720, 725 (9th Cir. 2011) (claims that were available at the time of the first habeas petition, but were not discovered until after that petition, are subject to § 2244(b)'s gatekeeping requirements).

The application for authorization to file a second or successive 28 U.S.C. § 2254 habeas corpus petition in the district court is denied. The applicant has not made a prima facie showing under 28 U.S.C. § 2244(b)(2) that:

(A) 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; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, 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.

Any pending motions are denied as moot.

No further filings will be entertained in this case.

DENIED.