

No. 24-1879

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Mar 4, 2025

KELLY L. STEPHENS, Clerk

In re: DARYL DUDE NELSON,

Movant.

)
)
)
)
)
)
)

ORDER

Before: SUHRHEINRICH, WHITE, and RITZ, Circuit Judges.

Daryl Dude Nelson, a Michigan prisoner proceeding pro se, moves for an order authorizing the district court to consider a second or successive application for a writ of habeas corpus under 28 U.S.C. § 2254. *See* 28 U.S.C. § 2244(b)(3)(A).

A jury convicted Nelson of second-degree murder and reckless driving causing death. *See People v. Nelson*, No. 323685, 2016 WL 155783, at *1 (Mich. Ct. App. Jan. 12, 2016) (per curiam). The trial court sentenced him to 25 to 50 years of imprisonment on the second-degree murder charge and 12 to 24 years of imprisonment on the reckless-driving charge, to run concurrently. *See id.* The Michigan Court of Appeals affirmed Nelson's convictions and sentence, *id.* at *11, and the Michigan Supreme Court denied leave to appeal, *People v. Nelson*, 877 N.W.2d 885 (Mich. 2016) (mem.).

~ In July 2016, Nelson filed his first § 2254 petition. The district court denied the petition, and this court denied a certificate of appealability. *Nelson v. Jackson*, No. 16-2623 (6th Cir. July 17, 2017). In 2019, Nelson unsuccessfully moved for authorization to file a second or successive § 2254 petition. *In re Nelson*, No. 19-2481 (6th Cir. May 6, 2020).

Nelson again moves for authorization to file a second or successive § 2254 petition. He seeks to raise claims that (1) he was denied his right to confrontation when complaining witness Sergeant Keely Cochran appeared only as a defense witness at trial, depriving him of the opportunity to cross-examine him, and when the medical examiner's report was introduced into

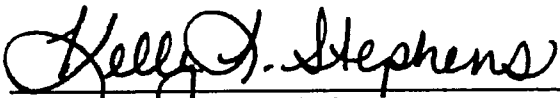
evidence without her appearing at trial to testify, and (2) he was “denied the right to know who was the complaining witness against him.”

We “may authorize the filing of a second or successive” § 2254 petition only if the petitioner “makes a prima facie showing” that it contains a claim premised on (1) “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable” or (2) new facts that “could not have been discovered previously through the exercise of due diligence” and that, “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.” 28 U.S.C. § 2244(b)(2), (b)(3)(C).

Nelson’s motion fails to meet these statutory requirements. He concedes that his first proposed claim relies on neither a new rule of constitutional law nor newly discovered evidence. And although he asserts that his second claim is based on newly discovered evidence, it is not. He cites the January 2016 decision affirming his convictions and sentence, stating that he “did not/could not know that an unknown complaining witness existed until the Michigan Court of Appeals issued its decision.” Because Nelson was aware of the facts underlying this proposed claim before he filed his initial § 2254 petition, the facts are not new. *See In re McDonald*, 514 F.3d 539, 545 (6th Cir. 2008). Nor do they show that, if proven, no reasonable juror would have found him guilty.

For these reasons, Nelson’s motion for an order authorizing the district court to consider a second or successive § 2254 petition is **DENIED**.

ENTERED BY ORDER OF THE COURT


Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 4, 2025
KELLY L. STEPHENS, Clerk

No. 24-1879

In re: DARYL DUDE NELSON,

Movant.

)
)
)
)
)
)

Before: SUHRHEINRICH, WHITE, and RITZ, Circuit Judges.

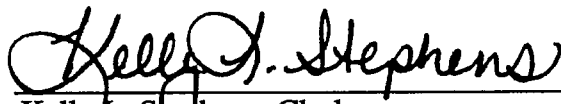
JUDGMENT

THIS MATTER came before the court upon the motion by Daryl Dude Nelson to authorize the district court to consider a second or successive 28 U.S.C. § 2254 petition for a writ of habeas corpus.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the motion for authorization is DENIED.

ENTERED BY ORDER OF THE COURT



Kelly L. Stephens, Clerk

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