In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-12608

In re: CHRISTOPHER J. BRADFORD,

Petitioner.

Application for Leave to File a Second or Successive
Habeas Corpus Petition, 28 U.S.C. § 2244(b)

Before ROSENBAUM, GRANT, and LUCK, Circuit Judges.

BY THE PANEL:

Pursuant to 28 U.S.C. § 2244(b)(3)(A), Christopher Bradford has filed an application seeking an order authorizing the district court to consider a second or successive petition for a writ of habeas corpus. Such authorization may be granted only if:

> (A) the applicant shows that 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.

28 U.S.C. § 2244(b)(2). "The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection." *Id.* § 2244(b)(3)(C); *see also Jordan v. Sec'y, Dep't of Corr.*, 485 F.3d 1351, 1357–58 (11th Cir. 2007) (explaining that our determination that an applicant has made a *prima facie* showing that the statutory criteria have been met is simply a threshold determination).

Bradford is a Florida prisoner serving a life imprisonment sentence for robbery with a firearm or deadly weapon.

In 1996, Bradford filed his original § 2254 petition, which the district court denied with prejudice. In that petition, he raised several claims of ineffective assistance by his trial and appellate counsel and two claims of error by the trial court. He alleged, in relevant that he should not be held accountable for these deficiencies, which violated his constitutional rights, because he was intellectually disabled, with a history of mental health issues, and had no legal background.

Second, Bradford raises four claims premised on trial counsel's allegedly inadequate representation. He claims his trial counsel was ineffective for: (1) failing to object to the absence of the judge during jury deliberations, (2) failing to object to "the erroneous no read back instruction" the trial court gave to the jury in violation of Fla. R. Crim. P. 3.410, which allows jurors to request the reading of testimony according to the court's discretion, (3) conceding the introduction of a ski mask into evidence that Bradford was compelled to wear for an in-court identification without sufficient foundation, and (4) failing to have the sentencing records transcribed for appellate review. He argues that these deficiencies constituted cause and prejudice to excuse his failure to raise important objections before the trial court. He asserts that, were it not for trial counsel's unreasonable performance, he would not have been deprived of his substantive or procedural rights. He states that the fault in the jury instructions was a *per se* reversible error if trial counsel had objected, and that objections to the judge's absence during jury deliberations and to the bailiff's *ex parte* communications with the jury would have been reasonably likely to result in a new trial. Bradford represents that none of his claims relies on a new rule of constitutional law or newly discovered evidence.

We must dismiss a claim presented in an application to file a second or successive § 2254 petition that was presented in an original § 2254 petition. 28 U.S.C. § 2244(b)(1); *In re Mills*, 101 F.3d 1369, 1371 (11th Cir. 1996) (applying 28 U.S.C. § 2244(b)(1) to dismiss an application for leave to file a successive § 2254 petition because the applicant presented the same claims in a previous § 2254 petition). We have explained that "a claim is the same where the basic gravamen of the argument is the same, even where new supporting evidence or legal arguments are added." *In re Baptiste*, 828 F.3d 1337, 1339-40 (11th Cir. 2016) (holding that the bar under § 2244(b)(1) applies to claims that were raised in a prior unsuccessful successive application filed by a federal prisoner). The bar in § 2244(b)(1) is jurisdictional. *In re Bradford*, 830 F.3d 1273, 1277-78 (11th Cir. 2016).

We have clarified that, since the passage of the Antiterrorism and Effective Death Penalty Act ("AEDPA"), the former "cause and prejudice" standard that required a petitioner to show that he was prejudiced by an inability to raise the stated claim in an earlier proceeding "no longer governs analysis of successive petitions." *In re Magwood*, 113 F.3d 1544, 1550 (11th Cir. 1997). Instead, it was replaced by the statutory criteria of 28 U.S.C. § 2244(b)(2). *Id.* "By enacting AEDPA, Congress directed courts of appeals to authorize the filing of successive petitions only when an applicant makes a prima facie showing that the claim advanced qualifies for one of the narrow exceptions specified in § 2244(b)(2)." *Id.*

As an initial matter, we lack jurisdiction to consider Bradford's claim that his trial counsel was ineffective for allowing the introduction of a ski mask into evidence that Bradford was compelled to wear for an in-court identification because he presented the same claim in his prior § 2254 petition. *See* 28 U.S.C. § 2244(b)(1); *In re Mills*, 101 F.3d at 1371; *In re Baptiste*, 828 F.3d at 1339-40; *In re Bradford*, 830 F.3d at 1277-78.

We have jurisdiction to consider the remainder of Bradford's ineffective-assistance claims against his trial and appellate counsel because they differ from the claims he raised in his initial § 2254 petition. However, he fails to make a *prima facie* case that any of these claims satisfies the criteria in § 2244(b)(2). He concedes that none of the claims he seeks to present in a second or successive § 2254 petition relies on either a new rule of constitutional law or newly discovered evidence and does not describe any new evidence or U.S. Supreme Court precedent supporting either claim. *See* 28 U.S.C. § 2244(b)(2)(A), (B). He claims that his inadequate representation at trial and on appeal constitutes cause and prejudice to excuse the procedural default of not raising these claims in prior proceedings. However, we have explained that the "cause and prejudice" standard is no longer relevant to the analysis of successive petitions because it was replaced by the statutory criteria of § 2244(b)(2), which Bradford has failed to satisfy. *See id.*; *In re Magwood*, 113 F.3d at 1550.

Therefore, we lack jurisdiction to review Bradford's claim that his trial counsel was ineffective for allowing the introduction of the ski mask and its use in in-court identification. As to the remainder of his application, he has raised no claim that meets the statutory criteria.

Accordingly, Bradford's application for leave to file a second or successive petition is hereby DISMISSED in part and DENIED in part.