

In the
United States Court of Appeals
For the Eleventh Circuit

No. 26-12041

In re: ANTHONY SHAWN EWELL,

Petitioner.

Motion for Authorization to File a Second or Successive
Motion to Vacate, Set Aside,
or Correct Sentence, 28 U.S.C. § 2255(h)

Before JORDAN, BRASHER, and KIDD, Circuit Judges.

BY THE PANEL:

Pursuant to 28 U.S.C. §§ 2255(h) and 2244(b)(3)(A), Anthony Ewell has filed a motion seeking an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his federal sentence, 28 U.S.C. § 2255. Such authorization may be granted only if this Court certifies that the second or successive motion contains a claim involving:

- (1) 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 the movant guilty of the offense; or

(2) 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). The prisoner must make a prima facie showing that the proposed claim satisfies those requirements. *Id.* § 2244(b)(3)(C); see also *In re Bowe*, 166 F.4th 1267, 1268 (11th Cir. 2026) (explaining that this Court's determination that a movant has made a prima facie showing that the statutory criteria have been met is simply a threshold determination).

Ewell is a federal prisoner serving a 46-month imprisonment sentence for possession of child pornography. In 2025, Ewell filed his original § 2255 motion, which the district court denied with prejudice. Later that same year, he moved our Court for authorization to file a successive § 2255 motion, which we denied.

In his current motion for authorization, Ewell raises four claims, all of which purportedly rely upon newly discovered evidence. First, Ewell argues that the Fort Lauderdale Police Department lacked the authority to investigate him, as the offense was committed in Hallandale Beach, a different municipality. Ewell also contends that the investigation was in retaliation for a civil rights lawsuit he filed against the city and one of the officers within the police department. Second, he asserts that he satisfies the requirements for an affirmative defense under the child pornography possession statute, 18 U.S.C. § 2252. Third, Ewell contends that the

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district court lacked subject matter jurisdiction to adjudicate his criminal case because there was no evidence that the relevant images had the required nexus to interstate or foreign commerce. Fourth, he argues that the Fort Lauderdale Police Department falsified probable cause to obtain a search warrant during the investigation into him. Ewell elaborates that the issuing judge was not informed that (1) the Fort Lauderdale Police Department lacked jurisdiction or that he had an active lawsuit against the department, (2) he did not have file sharing enabled, (3) the broadband carrier had been changed in a way that could produce inaccurate results for law enforcement, and (4) the government did not charge him with sharing or distributing child pornography.

To support his proposed claims, Ewell provides two pages from the transcript of his change-of-plea hearing, in which the government summarized the investigation into Ewell's criminal activity. The transcript indicates that the Fort Lauderdale Police Department, in conjunction with the Broward County Sheriff's Office and the Department of Homeland Security, began investigating an Internet protocol ("IP") address suspected of downloading and sharing child pornography. That IP address was linked to Ewell, who resided in Hallandale Beach, Florida. Ewell has also supplied an order from his federal civil rights case against the city of Fort Lauderdale showing that the case has been stayed pending the city's approval of a settlement agreement between the parties.

None of Ewell's claims satisfy the § 2255(h) criteria. *See In re Bowe*, 166 F.4th at 1268. He does not argue that any of his claims

rely on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, nor could he do so. Ewell's citations to Supreme Court decisions issued prior to the filing of his first § 2255 motion, unpublished decisions from our Court, and decisions from the Southern District of Florida are insufficient to satisfy § 2255(h)(2). The only Supreme Court case Ewell cites that was issued after the filing of his initial § 2255 motion is *Bowe v. United States*, 146 S. Ct. 447, 466 (2026) (holding that 28 U.S.C. § 2244(b)(1) does not apply to federal prisoners and that a federal prisoner seeking approval to file a second or successive § 2255 motion, including a motion that raises repeat claims, must meet one of the two requirements set out in § 2255(h)). He does not, however, rely on that case as a basis for relief. Rather, he cites *Bowe* for the proposition that § 2255(h)(1)'s "newly discovered evidence" standard does not require findings of due diligence or constitutional error. *See id.* at 464.

Ewell likewise has not made a *prima facie* showing that any of his claims satisfy the standard for "newly discovered evidence." 28 U.S.C. § 2255(h)(1). He argues in his first claim that the investigation into him was retaliatory and that the Fort Lauderdale Police Department lacked jurisdiction to commence it. However, even if both of these assertions were true, neither establish that Ewell is actually, factually innocent of possessing child pornography. *In re Sams*, 830 F.3d 1234, 1241 (11th Cir. 2016). Moreover, as evidenced by the transcript pages Ewell attached to the instant motion, he has been aware of the Fort Lauderdale Police Department's involvement in his investigation since at least his change-of-plea hearing.

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Therefore, any such evidence is not newly discovered for the purposes of § 2255(h)(1).

As to his second claim, Ewell states that he meets the requirements for an affirmative defense under 18 U.S.C. § 2252, but he does not provide evidence or allege any facts to support that conclusion. And neither the transcripts nor the court order he attaches to his motion provide details concerning such a defense. Thus, Ewell has not made a prima facie showing with clear and convincing evidence that he satisfied § 2252's affirmative defense standard. *See* 28 U.S.C. § 2255(h)(1).

For his third claim, Ewell likewise does not provide any evidence to make a prima facie showing that the district court lacked subject matter jurisdiction over his criminal case. *Id.* Although he asserts that a forensic expert determined that the files he was convicted of possessing lacked any evidence that would prove the required nexus to interstate or foreign commerce, none of the materials attached to his motion address this alleged finding. Ewell therefore has not met his burden of showing with clear and convincing evidence that the materials he possessed lacked an interstate nexus. *Id.*

Ewell's fourth claim similarly fails. Even if the subject search warrant fabricated probable cause, that information does not bear on Ewell's actual, factual innocence. *See In re Sams*, 830 F.3d at 1241.

Accordingly, because Ewell has failed to make a prima facie showing of the existence of either of the grounds set forth in

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28 U.S.C. § 2255(h), his motion for authorization to file a second or successive § 2255 motion is hereby DENIED.

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