S.D.N.Y. – N.Y.C.
13-cr-58
17-cv-6444
Hellerstein, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 31st day of August, two thousand twenty-six.

Present:

Raymond J. Lohier, Jr.,
Chief Judge,
Denny Chin,
William J. Nardini,
Circuit Judges.

Anthony Serrano,

Petitioner,

v. 26-1846

United States of America,

Respondent.

Petitioner moves for leave to file a successive 28 U.S.C. § 2255 motion challenging his conviction under 18 U.S.C. § 924(c). Upon due consideration, it is hereby ORDERED that the motion is DENIED because Petitioner has not made a prima facie showing that the requirements of 28 U.S.C. § 2255(h) are satisfied.

First, to the extent Petitioner claims to rely on new evidence under § 2255(h)(1), the case law he cites is not new evidence within the meaning of § 2255(h)(1), and he has not made a showing that the documents mentioned in his motion were previously unavailable. *See McCloud v. United States*, 987 F.3d 261, 262 (2d Cir. 2021) (holding "that an intervening development in case law . . . is not a newly discovered 'fact' within the meaning of § 2255(f)(4)" (governing statute of limitations for § 2255 motions));.

Second, Petitioner also relies on § 2255(h)(2), but has not made a showing that any of the cases he cites announced or discussed any relevant "new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable" as required by that statute. He cites *Bowe v. United States*, 607 U.S. 13 (2026), but that case did not announce or discuss any new rule of constitutional law, but rather interpreted 28 U.S.C. § 2244(b)(1) and § 2255(h). 607 U.S. at 36–42; *see also In re Bowe*, 166 F.4th 1267, 1271 (11th Cir. 2026) (on remand from Supreme Court, stating that *Bowe* "held as a matter of statutory interpretation that § 2244(b)(1) does not apply to federal prisoners").

Petitioner further relies on *United States v. Heyward*, 3 F.4th 75 (2d Cir. 2021), *United States v. McCoy*, 995 F.3d 32 (2d Cir. 2021), and *United States v. Martinez*, 991 F.3d 347 (2d Cir. 2021), but has not made a showing that those cases announced or discussed any new rule of constitutional law relevant to his convictions. *Heyward*, *McCoy*, and *Martinez* discussed the new rules of law announced in *United States v. Davis*, 588 U.S. 445 (2019), and *Johnson v. United States*, 576 U.S. 591 (2015), but *Davis* and *Johnson* are not relevant to Petitioner's § 924(c) conviction because this Court has already determined that his § 924(c) conviction was predicated on a narcotics conspiracy, a type of predicate that *Davis* and *Johnson* do not address. 2d Cir. 19-3224, doc. 40 (Order). This Court's prior decision remains the law of the case. *See United States v. Williams*, 475 F.3d 468, 471 (2d Cir. 2007) (law-of-the-case doctrine "forecloses reconsideration of issues that were decided—or that could have been decided—during prior proceedings" in the same case). Nothing in *Bowe* bars use of the law-of-the-case doctrine in habeas proceedings. *Bowe*, 607 U.S. at 41 n.10 (stating that "courts developed different equitable doctrines to address abuses of the writ," and that "Congress can displace those doctrines, but in the absence of evidence of that intent, federal courts can continue to use those common-law tools"); *In re Bowe*, 166 F.4th at 1271 n.1 ("That is not to say that federal prisoners who file duplicative § 2255(h) requests will necessarily receive the authorization they seek. In many cases, the law of the case doctrine may bar reconsideration of a request that is substantively identical to one we have already denied.").

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

