

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 15-13795-D

IN RE: Willie Sharp, Jr.,

Petitioner.

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

Before TJOFLAT, WILLIAM PRYOR and JILL PRYOR, Circuit Judges.

BY THE PANEL:

Pursuant to 28 U.S.C. §§ 2255(h) and 2244(b)(3)(A), Willie Sharp, Jr. has filed an application seeking an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his federal sentence. 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 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).

In his application, Mr. Sharp indicates that he wishes to raise one claim in a second or successive § 2255 motion. He asserts that his claim relies upon a new rule of constitutional law, citing *Johnson v. United States*, 135 S. Ct. 2551 (2015), in which the Supreme Court held that the residual clause of the Armed Career Criminal Act (“ACCA”) is unconstitutionally vague, and imposing an increased sentence under that provision therefore violates due process. Specifically, Mr. Sharp argues that his prior burglary convictions do not qualify as violent felonies under either the elements clause or the residual clause of the ACCA.

In a published order, this Court recently held that, although *Johnson* announced a new substantive rule of constitutional law, the Supreme Court has not made that rule retroactively applicable to cases on collateral review. *In re Rivero*, No. 15-13089, manuscript op. at 4 (11th Cir. Aug. 12, 2015). Thus, under our binding precedent *Johnson* does not provide a basis for Mr. Sharp’s successive § 2255 motion. *See* 28 U.S.C. § 2255(h)(2).

Accordingly, because Mr. Sharp has failed to make a *prima facie* showing of the existence of either of the grounds set forth in 28 U.S.C. § 2255, his application for leave to file a second or successive motion is hereby DENIED.