

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

GLENN L. GREEN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

97-10164-01-MLB

No. 04-3461

(D.C. No. 00-CV-3186-MLB)

ORDER

Filed February 1, 2005

Before **KELLY, HENRY**, and **TYMKOVICH**, Circuit Judges.

Due to a clerical error, the order issued in this appeal on January 20, 2005 is vacated.

This order is entered nunc pro tunc and reads as follows.

This matter is before the court based on a motion by Glenn L. Green under the Antiterrorism and Effective Death Penalty Act (AEDPA) for authorization to file a second or successive 28 U.S.C. § 2255 motion in the district court.

Mr. Green was convicted of possession with intent to distribute methamphetamine; possession with intent to distribute cocaine; and possession of methamphetamine. His convictions were affirmed on direct appeal. *See United States v. Green*, 178 F.3d 1099 (10th

Cir. 1999). In 2000, he filed his first § 2255 motion under the AEDPA, which the district court denied. On appeal, this court denied a certificate of appealability and dismissed. *See United States v. Green*, No. 00-3383, 2002 WL 1486485 (10th Cir. Jul. 12, 2002) (unpublished).

After careful review of the motion for authorization, the court concludes that Mr. Green has failed to make a prima facie showing as required by 28 U.S.C. § 2244(b)(3)(C) to permit the filing of a second or successive § 2255 motion. *See Bennett v. United States*, 119 F.3d 468, 469-70 (7th Cir. 1997). The four claims raised by Mr. Green are not based on newly discovered evidence that would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found him guilty of the drug offenses. *See* § 2255(2). The present claims should have, and could have, been raised in the first § 2255.

The motion for authorization is DENIED. Mr. Green's motions to supplement and to file reply are GRANTED. All other pending motions are DENIED. The matter is DISMISSED.

This order "shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari." 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court,
Patrick Fisher, Clerk