

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

THOMAS WOODBERRY,

Petitioner,

v.

No. 04-3250

STATE OF KANSAS; DAVID
MCKUNE, Warden, Lansing Correctional
Facility,

Respondents.

A true copy

Teste

Patrick Fisher
Clerk, U. S. Court of
Appeals, Tenth Circuit

By


Deputy Clerk

THOMAS WOODBERRY,

Petitioner,

v.

No. 04-3252

DAVE MCKUNE; ATTORNEY
GENERAL OF THE STATE OF
KANSAS,

Respondents.

ORDER

Filed September 1, 2004

Before TACHA, Chief Judge, KELLY and HENRY, Circuit Judges.

These matters were transferred to this court by the district court to determine whether Thomas Woodberry should be granted authorization to file another habeas

petition. *See Coleman v. United States*, 106 F.3d 339, 341 (10th Cir. 1997). The matters are consolidated for purposes of submission and disposition.

Mr. Woodberry, a state prisoner in Kansas, contends that his sentence was illegally aggregated, that he was denied effective assistance of counsel, that the state denied him a forum to present his sufficiency of the evidence claim, and that his sentences violate *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

To obtain authorization to file a second or successive habeas petition the movant must make a prima facie showing that the grounds set forth are based on either a new rule of constitutional law made retroactive on collateral review by the United States Supreme Court that was previously unavailable, or newly discovered evidence, the factual basis for which could not have been discovered previously through the exercise of due diligence, and which would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the movant guilty of the underlying offense. *See* 28 U.S.C. § 2244(b)(2).

We have reviewed Mr. Woodberry's claims and conclude that he has not fulfilled these requirements.

Accordingly, authorization is **DENIED**. This order is not subject to a petition for rehearing or a writ of certiorari. *See* 28 U.S.C. § 2244(b)(3)(E).

Entered for the Court
PATRICK FISHER, Clerk of Court