IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 07-40324

In Re: JAMES LEE CLARK,

Movant

United States Court of Appeals
Fifth Circuit

FILED

April 9, 2007

Charles R. Fulbruge III
Clerk

Motion for an order authorizing the United States District Court for the Eastern District of Texas, Sherman, to consider a successive 28 U.S.C. § 2254 application

Before DAVIS, GARZA, and DENNIS, Circuit Judges.

PER CURIAM:[1]

The movant, James Lee Clark, has requested authorization to file a successive habeas petition alleging that the judgment against him was void for improper jury instructions, a stay of execution pending resolution of this appeal, and a stay of execution pending the disposition of Schriro v. Landrigan, a case presently before the United States Supreme Court.

Clark's successive habeas petition is barred by the Antiterrorism and Effective Death Penalty Act (AEDPA). Clark has not shown that his claim is based on either a new rule of constitutional law made retroactive by the Supreme Court or that it could not have been discovered previously through due diligence. 28

[1] Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

U.S.C. § 2244. Clark cites no direct authority for his position that a challenge to his conviction as void is not subject to AEDPA's requirements. The case Clark references as involving a similar issue, Rhode v. Olk-Long, 84 F.3d 284 (8th Cir. 1996), dealt with a conviction invalid for lack of jurisdiction, which has not been alleged here. The motions for authorization to file a successive habeas petition and to stay execution pending resolution of this claim are DENIED.

Clark has also moved to stay execution pending the Supreme Court's decision in Schriro v. Landrigan. The motion has presented nothing to controvert Clark's previous admission that he elected not to present the testimony of witnesses his counsel had subpoenaed after full counseling by his attorney. Clark v. Johnson, 227 F.3d 273, 284 (5th Cir. 2000). Our review of the issues pending before the Supreme Court in Schriro indicates that it involves distinct issues and facts that do not implicate our previous decision. The motion to stay execution pending the decision in Schriro is DENIED.

The movant's unopposed motion to proceed in forma pauperis in any further action in this case is GRANTED.