

United States Court of Appeals For the First Circuit

No. 18-2230

GILBERTO VARELA-RIVERA,

Petitioner,

v.

UNITED STATES,

Respondent.

Before

Torruella, Lynch and Kayatta,
Circuit Judges.

JUDGMENT

Entered: March 24, 2020

Upon police entry, Gilberto Varela-Rivera (Varela) was found in a rented room with a gun and illegal drugs. The police had been called by management, who reported that Varela had overstayed and could not be roused. The physical evidence incriminating him was suppressed at the conclusion of a hearing in a Puerto Rico court, and the commonwealth charges against him were dismissed. Soon thereafter, he pleaded guilty in federal court to possessing a firearm in relation to a drug trafficking crime, 18 U.S.C. § 924(c)(1)(A), a charge stemming from the same events described above. A direct appeal was unsuccessful, *see United States v. Varela-Rivera*, 551 F. App'x 583 (1st Cir. 2014), as was a first motion under 28 U.S.C. § 2255. Varela now requests permission to file a second or successive § 2255 motion pursuant to 28 U.S.C. § 2255(h). He asserts that, in light of recovered court documents allegedly kept by the Puerto Rico prosecutor and in light of the United States Supreme Court's decision in *Puerto Rico v. Sanchez-Valle*, 136 S. Ct. 1863 (2016), his federal prosecution violated his rights under the double-jeopardy clause of the Fifth Amendment.

As an initial matter, the exhibits Varela tendered with his original application and memorandum are accepted for filing under seal. Also, Varela's motion to amend is granted. The court has considered all of Varela's filings to the extent relevant and appropriate. Assuming, without deciding, that Varela otherwise might satisfy the gatekeeping requirements set out at § 2255(h), the substance of his claim is defeated by circuit precedent. *See United States v.*

Santiago-Colon, 917 F.3d 43, 57 (1st Cir. 2019); United States v. Rosado-Cancel, 917 F.3d 66, 69 (1st Cir. 2019). Varela's argument impugning the interstate-commerce nexus for the federal charges against him also is insufficient to garner authorization. Accordingly, we conclude that Varela has failed to make the prima facie showing necessary to garner authorization to pursue a second or successive § 2255 motion. See Evans-Garcia v. United States, 744 F.3d 235, 237 (1st Cir. 2014) (required prima facie showing is "a sufficient showing of possible merit to warrant a fuller exploration by the district court").

The application is **denied**.¹

By the Court:

Maria R. Hamilton, Clerk

cc:

Gilberto Varela-Rivera

Mariana E. Bauza Almonte

¹ Th[is] . . . denial of an authorization . . . to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari." See 28 U.S.C. § 2244(b)(3)(E).