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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOHN F. FRIEDLANDER,</p> <p>Petitioner,</p> <p>v.</p> <p>UNITED STATES OF AMERICA,</p> <p>Respondent.</p>
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No. 13-70918

ORDER\*

Application to File Second or Successive  
Petition Under 28 U.S.C. § 2255

Submitted October 8, 2013\*\*  
Seattle, Washington

Before: TASHIMA, GRABER, and MURGUIA, Circuit Judges.

John Friedlander was charged as an adult in federal district court for a murder committed when he was sixteen. On January 20, 1988, he pleaded guilty to Second Degree Murder in violation of 18 U.S.C. § 1111(a), and Assault with Intent

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this motion suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2)(C).

to Commit Murder in violation of 18 U.S.C. § 113(a). He was sentenced to life in prison for the murder charge, and a concurrent term of twenty years for the assault charge. In 1992, the district court denied his first *pro se* motion under 28 U.S.C. § 2255. Friedlander has now filed an application for leave to file a second or successive motion under § 2255. We have jurisdiction under 28 U.S.C. § 2255(h).

We may authorize the filing of a second or successive motion under § 2255 if, among other things, the application makes a prima facie showing that the motion would “contain . . . 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; 28 U.S.C. § 2244(b)(C). Friedlander contends that his sentence is contrary to *Miller v. Alabama*, 132 S. Ct. 2455 (2012), which held that a mandatory sentence of life without the possibility of parole for a juvenile homicide offender violates the Eighth Amendment. We need not decide whether *Miller* announced a new, retroactive rule of constitutional law because, even if it did, Friedlander’s application would fail.

*Miller* is inapplicable because Friedlander was not sentenced to life without parole. Friedlander admits that he “has seen the parole board approximately 8 time[s] . . . and [has] a forth coming [sic] hearing in February of 2014.”

The application to file a second or successive motion under § 2255 is

**DENIED.**