NOT FOR PUBLICATION

FILED

FEB 12 2026

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARK J. GOSSETT, Petitioner, v. KARIN ARNOLD, Respondent.	No. 25-582 D.C. No. MEMORANDUM*

Application to File Second or Successive Petition
Under 28 U.S.C. § 2254

Submitted February 9, 2026**
Seattle, Washington

Before: McKEOWN, PAEZ, and BUMATAY, Circuit Judges.

Mark Gossett petitions this court for leave to file a second or successive petition under 28 U.S.C. § 2254. We deny leave.

On June 10, 2010, Gossett was sentenced to over twenty-years imprisonment followed by a term of community custody. The sentence included conditions that

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Gossett must follow once released into the community. On March 13, 2012, a Washington state court of appeal found that the condition preventing him from possessing pornographic materials was "unconstitutionally vague." *State v. Gossett*, 167 Wash. App. 1011 at *1 (2012) (unpublished). The court of appeals affirmed the rest of the sentence, only "remand[ing] for resentencing" on the unconstitutional custody condition. *Id.* at *1, *5.

For unknown reasons, Gossett's sentence was not amended until November 19, 2024. The order struck the vague condition but maintained that "all other aspects of the judgment and sentence . . . remain in full force and effect."

In August 2015, Gosset filed his first federal habeas petition, which was denied by the district court. Gossett later filed numerous federal habeas petitions, which were denied as successive.

On January 18, 2025, after the filing of the amended judgment, Gossett filed his latest application for leave to file a successive petition. The Antiterrorism and Effective Death Penalty Act bars state prisoners from filing "second or successive" habeas corpus applications unless granted leave to do so by this court. 28 U.S.C. § 2244(b)(1)–(3)(A). Gossett argues that the amended sentence is an "intervening judgment," which renders this petition "a first" rather a "second or successive petition." *See Gonzalez v. Sherman*, 873 F.3d 763, 769 (9th Cir. 2017).

The amended sentence was not an "intervening judgment." "We look to the

applicable state law to determine whether a sentencing change made by the state court created a new sentencing judgment." *Colbert v. Haynes*, 954 F.3d 1232, 1236 (9th Cir. 2020). "In Washington, only sentencing errors stemming from a trial court exceeding its statutory authority render a sentencing judgment invalid." *Id.* (citing *In re Coats,* 267 P.3d 324, 331 (Wash. 2011) (en banc)). In contrast, "sentencing errors correctible through ministerial action that does not involve exercising discretion are not errors that render the original sentence invalid." *Id.* (citing *State v. Ramos,* 246 P.3d 811, 812 (Wash. 2011) (en banc)).

In this case, the only defective part of Gossett's sentence was the community custody condition. *Gossett,* 167 Wash. App. at *1. After Gossett appealed the condition, the state "concede[d]" that the condition was unconstitutional, and the court of appeals "accept[ed] the State's concession and remand[ed] for sentencing." *Id.* at *4–5. And aside from remanding to correct the community custody condition, the state appellate court "[o]therwise, . . . affirm[ed]" the conviction and the sentence. *Id.* at *1.

The trial court's striking of the single vague condition was not "an exercise of independent judgment by the trial court." *State v. Kilgore*, 216 P.3d 393, 399 (Wash. 2009) (citing *State v. Barberio*, 797 P.2d 511 (Wash. 1990)). At the resentencing, the sentencing judge explained that its task was to "address the single issue" from the appellate court: "Get rid of [the unconstitutional condition]." The sentencing

judge then "simply correct[ed] the original . . . sentence" by striking the condition and did nothing more. *Kilgore,* 216 P.3d at 399.

The amended sentence was thus not a "new sentencing judgment," *Colbert*, 954 F.3d at 1236. Gossett must satisfy the requirements for filing a successive petition under § 2244(b)(2), which he cannot do. Thus, the application for leave to file his habeas petition is

DENIED.[1]

[1] Petitioner's Motion to Proceed Pro Se and to Strike Counsel's Filings (Dkt. No. 25) is DENIED. Petitioner's subsequent pro se motions (Dkt. No. 36, 41, 48) are all DENIED as moot. Petitioner's Motion to Take Judicial Notice of the Transcript of his resentencing and other judicial records (Dkt. No. 28) is GRANTED.