

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 18-2376

Charles Russell Rhines

Appellant

v.

Darin Young, Warden, South Dakota State Penitentiary

Appellee

Appeal from U.S. District Court for the District of South Dakota - Rapid City
(5:00-cv-05020-KES)

ORDER

With the district court's final order denying Charles Russell Rhines's federal petition for a writ of habeas corpus pending on appeal, Rhines filed in the district court a Rule 15(a)(2) motion for leave to amend the petition and a Rule 60(b) motion for relief from judgment. The district court denied relief on the ground that Rhines was seeking second or successive habeas relief that had not been authorized by the court of appeals, see 28 U.S.C. § 2244(b)(3)(A), and denied a certificate of appealability. We deny Rhines's application for a certificate of appealability from that ruling. Judge Kelly would grant the certificate.

Rhines also filed a motion in the district court for an order requiring respondent to produce Rhines for evaluation by mental health experts retained by the defense to support a potential request for executive clemency, relief that the South Dakota state courts have denied. The district court denied relief on the merits and denied a certificate of appealability. We conclude that no certificate of appealability is required to appeal this issue. A separate order establishing a briefing schedule will be issued.

The motion for leave to file an amicus brief is hereby granted.

September 07, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans