

**Filed 9/19/96**

**UNITED STATES COURT OF APPEALS  
TENTH CIRCUIT**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RONALD DEAN BOREN,

Defendant - Appellant.

No. 96-6130

W.D. Oklahoma

(D.C. No. CIV-96-237-C)

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**ORDER AND JUDGMENT\***

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Before **ANDERSON, BARRETT, and MURPHY**, Circuit Judges.

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After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Ronald Dean Boren appeals the denial of his second motion filed pursuant to 28 U.S.C. § 2255, in which he argues that his criminal prosecution for interstate travel in aid

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

of racketeering was barred by the Double Jeopardy Clause because he had already suffered civil forfeiture of several items of personal property pursuant to 21 U.S.C. § 881 and Okla. Stat. Ann. tit. 63, § 2-503 (Supp. 1987).

As the district court correctly observed, the motion raises issues not asserted in Boren's prior motion, and is not accompanied by any showing of cause and prejudice or actual innocence. See United States v. Richards, 5 F.3d 1369, 1370 (10th Cir. 1993) (petitioner must excuse his failure to raise his contentions earlier by showing cause and prejudice therefrom or by showing actual innocence). Therefore, the motion is properly dismissed as an abuse of the writ. Rule 9(b), Rules Governing § 2255 Proceedings, 28 U.S.C. App.

Even if the merits of Boren's argument were reached, his claims as to both the federal and state civil forfeiture statutes would be foreclosed by United States v. Ursery, \_\_\_ U.S. \_\_\_, 116 S. Ct. 2135, 2149 (1996).

Finding that Boren has made no "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), we DENY the certificate of appealability and DISMISS the appeal.

ENTERED FOR THE COURT

Stephen H. Anderson  
Circuit Judge