

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
GREGORY TODD HARRELL,
Defendant-Appellant.

No. 03-7167

Appeal from the United States District Court
for the Western District of Virginia, at Roanoke.
Samuel G. Wilson, Chief District Judge.
(CR-94-37, CA-03-465-7)

Submitted: November 6, 2003

Decided: November 20, 2003

Before WIDENER, MICHAEL, and TRAXLER, Circuit Judges.

Affirmed and authorization denied by unpublished per curiam opinion.

COUNSEL

Gregory Todd Harrell, Appellant Pro Se. Karen Breeding Peters,
Assistant United States Attorney, Roanoke, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Gregory Todd Harrell seeks to appeal the district court's order dismissing his Fed. R. Civ. P. 60(b) motion. The district court, pursuant to our decision in *United States v. Winestock*, 340 F.3d 200, 206 (4th Cir.), *petition for cert. filed*, ___ U.S.L.W. ___ (U.S. Sept. 22, 2003) (No. 03-6548), construed Harrell's pleading as a motion filed under 28 U.S.C. § 2255 (2000), and dismissed the motion as successive, noting that Harrell had not obtained authorization from this court to file such a motion. We have independently reviewed the record and affirm the district court's judgment.

Additionally, we construe Harrell's notice of appeal and informal brief on appeal as an application to file a second or successive motion to vacate under 28 U.S.C. § 2255. *See Winestock*, 340 F.3d at 208. In order to obtain authorization to file a successive § 2255 motion, a movant must assert claims based on either: (1) a new rule of constitutional law, previously unavailable, made retroactive by the Supreme Court to cases on collateral review; or (2) newly discovered evidence that would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense. 28 U.S.C. §§ 2244(b)(3)(C), 2255 ¶ 8 (2000). Harrell's claims do not satisfy either of these conditions. Therefore, we decline to authorize Harrell to file a successive § 2255 motion. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED AND AUTHORIZATION DENIED