

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-6352

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERT JAMES DAWKINS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, Senior District Judge. (1:07-cr-00224-CMH-1)

Submitted: August 16, 2011

Decided: August 19, 2011

Before WILKINSON, DAVIS, and KEENAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Bruce A. Johnson, Jr., Bowie, Maryland, for Appellant. Neil H. MacBride, United States Attorney, Gregory P. Bailey, Special Assistant United States Attorney, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert James Dawkins appeals the district court's order denying his motion to withdraw his guilty plea due to ineffective assistance of counsel. Finding no reversible error, we affirm.

We review the denial of a motion to withdraw a guilty plea for abuse of discretion. United States v. Ubakanma, 215 F.3d 421, 424 (4th Cir. 2000). Although a defendant may seek to withdraw his guilty plea prior to sentencing, pursuant to Fed. R. Crim. P. 11(e), "[a]fter the court imposes sentence, the defendant may not withdraw a plea of guilty . . . , and the plea may be set aside only on direct appeal or collateral attack." See Puello v. Bureau of Citizenship & Immigration Servs., 511 F.3d 324, 330 (2d Cir. 2007); United States v. Reyes-Contreras, 349 F.3d 524, 525 (8th Cir. 2003) (per curiam).

Dawkins pled guilty to filing false claims and was sentenced in June 2007. He did not move to withdraw his guilty plea until October 2010, over three years after sentencing. Thus, we hold that the district court did not abuse its discretion in denying Dawkins's motion as untimely filed.*

* Dawkins also argues that he is entitled to equitable tolling of the 28 U.S.C. § 2255 (West Supp. 2011) statute of limitations, appearing to believe that the district court construed his motion as a § 2255 motion and denied it accordingly. Because the district court made no such
(Continued)

Accordingly, we affirm the district court's order and deny Dawkins's motion for a certificate of appealability. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

construction, the applicability of equitable tolling is not at issue in this appeal. Likewise, no certificate of appealability need issue.