

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-7645

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TIMOTHY SHERRON JOHNSON,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (5:09-cr-00066-BO-1; 5:12-cv-00390-BO)

Submitted: January 23, 2015

Decided: February 3, 2015

Before SHEDD and WYNN, Circuit Judges, and DAVIS, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Thomas P. McNamara, Federal Public Defender, G. Alan Dubois, Assistant Federal Public Defender, Raleigh, North Carolina, for Appellant. Thomas G. Walker, United States Attorney, Jennifer P. May-Parker, Kristine L. Fritz, Assistant United States Attorneys, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Timothy Sherron Johnson appeals the district court's order dismissing his 28 U.S.C. § 2255 (2012) motion as untimely filed. The district court granted a certificate of appealability on the issue of whether Johnson's § 2255 motion was timely filed. We expanded the certificate of appealability and directed the parties to file supplemental briefs in light of Miller v. United States, 735 F.3d 141 (4th Cir. 2013), and Johnson's waiver of his right to attack his conviction and sentence in a § 2255 proceeding. This appeal was subsequently placed in abeyance for Whiteside v. United States, __ F.3d __, 2014 WL 7245453 (4th Cir. Dec. 19, 2014) (en banc) (No. 13-7152).

On appeal, Johnson argues that his motion was timely filed under 28 U.S.C. § 2255(f)(4) pursuant to Johnson v. United States, 544 U.S. 295, 308 (2005), and United States v. Gadsen, 332 F.3d 224 (4th Cir. 2003), or that, in the alternative, he is entitled to equitable tolling. Johnson's arguments are foreclosed by our en banc decision in Whiteside. See Whiteside, __ F.3d __, 2014 WL 7245453, at *3-*6 (holding new legal holdings, other than rulings in the movant's own case, do not constitute new "facts" under § 2255(f)(4) and rejecting argument that United States v. Simmons, 659 F.3d 237 (4th Cir. 2011) (en banc) provides a basis for equitable tolling).

Accordingly, we affirm the dismissal of Johnson's § 2255 motion as untimely filed. 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