

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6680

DARNELL TYRECE HAYES,

Petitioner - Appellant,

v.

JUSTIN ANDREWS, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at
Raleigh. Louise W. Flanagan, District Judge. (5:18-hc-02299-FL)

Submitted: November 17, 2020

Decided: November 20, 2020

Before MOTZ and KEENAN, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Darnell Tyrece Hayes, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Darnell Tyrece Hayes, a federal prisoner, appeals the district court's orders denying relief on his 28 U.S.C. § 2241 petition and his Fed. R. Civ. P. 59(e) motion in which he sought to challenge his sentence by way of the savings clause in 28 U.S.C. § 2255. Pursuant to § 2255(e), a prisoner may challenge his sentence in a traditional writ of habeas corpus pursuant to § 2241 if a § 2255 motion would be inadequate or ineffective to test the legality of his detention.

[Section] 2255 is inadequate and ineffective to test the legality of a sentence when: (1) at the time of sentencing, settled law of this circuit or the Supreme Court established the legality of the sentence; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the aforementioned settled substantive law changed and was deemed to apply retroactively on collateral review; (3) the prisoner is unable to meet the gatekeeping provisions of § 2255(h)(2) for second or successive motions; and (4) due to this retroactive change, the sentence now presents an error sufficiently grave to be deemed a fundamental defect.

United States v. Wheeler, 886 F.3d 415, 429 (4th Cir. 2018), *cert. denied*, 139 S. Ct. 1318 (2019).

We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Hayes v. Andrews*, No. 5:18-hc-02299-FL (E.D.N.C. Aug. 20, 2019 & Mar. 16, 2020). We deny Hayes' motions for appointment of counsel and for 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