

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6082

LEONEL ERNESTO VILLASENOR,

Petitioner - Appellant,

v.

MARK BOLSTER,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Robert G. Doumar, Senior District Judge. (2:19-cv-00525-RGD-LRL)

Submitted: July 20, 2021

Decided: July 23, 2021

Before WILKINSON, AGEE, and DIAZ, Circuit Judges.

Affirmed as modified by unpublished per curiam opinion.

Leonel Ernesto Villasenor, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Leonel Ernesto Villasenor, a federal prisoner, appeals the district court's order accepting the recommendation of the magistrate judge and dismissing Villasenor's 28 U.S.C. § 2241 petition in which Villasenor 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).

We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's judgment. However, we modify the dismissal order, *Villasenor v. Bolster*, No. 2:19-cv-00525-RGD-LRL (E.D. Va. Dec. 22, 2020), to reflect dismissal without prejudice for lack of jurisdiction, *see Wheeler*, 886 F.3d at 426, and affirm the order as modified, 28 U.S.C. § 2106. 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 AS MODIFIED