

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-6877

TONY TAYLOR,

Petitioner - Appellant,

v.

WARDEN, FCI Fort Dix,

Respondent - Appellee,

and

DAVID L. YOUNG,

Respondent.

Appeal from the United States District Court for the Southern District of West Virginia, at Beckley. Frank W. Volk, District Judge. (5:21-cv-00414)

Submitted: January 25, 2024

Decided: February 6, 2024

Before THACKER and HEYTENS, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed as modified by unpublished per curiam opinion.

Tony Taylor, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Tony Taylor, a federal prisoner, appeals the district court's order adopting the magistrate judge's recommendation and dismissing Taylor's 28 U.S.C. § 2241 petition for lack of subject matter jurisdiction. In his § 2241 petition, Taylor sought to challenge his 18 U.S.C. § 922(g)(1) conviction under *Rehaif v. United States*, 139 S. Ct. 2191 (2019), by way of the savings clause in 28 U.S.C. § 2255(e). The Supreme Court recently held "that § 2255(e)'s saving[s] clause does not permit a prisoner asserting an intervening change in statutory interpretation to circumvent [the Antiterrorism and Effective Death Penalty Act of 1996]'s restrictions on second or successive § 2255 motions by filing a § 2241 petition." *Jones v. Hendrix*, 599 U.S. 465, 471 (2023). Instead, "[§] 2255(h) specifies the two limited conditions in which Congress has permitted federal prisoners to bring second or successive collateral attacks on their sentences." *Id.* at 480. In light of *Jones*, Taylor cannot pursue his claim in a § 2241 petition by way of § 2255(e)'s savings clause.

Accordingly, we affirm the district court's order, *Taylor v. Warden*, No. 5:21-cv-00414 (S.D.W. Va. July 19, 2022), as modified to reflect that the dismissal of Taylor's claims is without prejudice, *see S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 185 (4th Cir. 2013) ("A dismissal for lack of . . . subject matter jurisdiction[] must be one without prejudice, because a court that lacks jurisdiction has no power to adjudicate and dispose of a claim on the merits."). We deny as moot Taylor's motion to hold the appeal in abeyance for the Supreme Court's decision in *Jones*.

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