

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-7064

NIVALDO RIASCOS,

Petitioner - Appellant,

v.

WARDEN, FCI MCDOWELL,

Respondent - Appellee.

No. 20-7146

NIVALDO RIASCOS,

Petitioner - Appellant,

v.

WARDEN, FCI MCDOWELL,

Respondent - Appellee.

Appeals from the United States District Court for the Southern District of West Virginia,
at Bluefield. David A. Faber, Senior District Judge. (1:19-cv-00254)

Submitted: December 17, 2020

Decided: December 22, 2020

Before THACKER, HARRIS, and QUATTLEBAUM, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Nivaldo Riascos, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In these consolidated cases, Nivaldo Riascos, a federal prisoner, appeals the district court's orders adopting the magistrate judge's recommendation and dismissing Riascos' 28 U.S.C. § 2241 petition for lack of jurisdiction, and denying his Fed. R. Civ. P. 59(e) motion to alter or amend judgment. In this circuit, a federal prisoner may file a § 2241 petition challenging his conviction only upon showing that 28 U.S.C. § 2255 is inadequate or ineffective to test the legality of his detention. *In re Jones*, 226 F.3d 328, 333 (4th Cir. 2000); *see* 28 U.S.C. § 2255(e). To make such a showing, the prisoner must demonstrate that:

(1) at the time of conviction, settled law of this circuit or the Supreme Court established the legality of the conviction; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the substantive law changed such that the conduct of which the prisoner was convicted is deemed not to be criminal; and (3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law.

Jones, 226 F.3d at 333-34.

Upon review, we agree with the district court that Riascos failed to satisfy the requirements of *In re Jones* and that Riascos' arguments to avoid application of the *In re Jones* standard lack merit. *See Fontanez v. O'Brien*, 807 F.3d 84, 86 (4th Cir. 2015) (providing for de novo review of district court's denial of relief on a § 2241 petition). Further, we discern no abuse of discretion in the district court's denial of Riascos' Rule 59(e) motion. *Wicomico Nursing Home v. Padilla*, 910 F.3d 739, 750 (4th Cir. 2018) (setting forth standard of review for the denial of a Rule 59(e) motion).

Accordingly, we affirm the district court's orders for the reasons stated therein. *Riascos v. Warden*, No. 1:19-cv-00254 (S.D.W. Va. July 1, 2020 & July 20, 2020). 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