

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6746

DUSTIN M. GRAMMER,

Petitioner - Appellant,

v.

WARDEN, FCI Gilmer,

Respondent - Appellee.

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. Gina M. Groh, Chief District Judge. (3:19-cv-00057-GMG)

Submitted: August 24, 2021

Decided: August 27, 2021

Before NIEMEYER and HARRIS, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Dustin M. Grammer, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dustin M. Grammer, a federal prisoner, appeals the district court's order accepting the recommendation of the magistrate judge and denying relief on Grammer's 28 U.S.C. § 2241 petition in which Grammer 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 conviction or 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).

Because Grammer was sentenced under the advisory Sentencing Guidelines, we agree with the district court's conclusion that he fails to satisfy the fourth prong of *Wheeler*. See *Braswell v. Smith*, 952 F.3d 441, 450 (4th Cir. 2020); *Lester v. Flournoy*, 909 F.3d 708, 715 (4th Cir. 2018). Accordingly, we affirm for the reasons stated by the district court. *Grammer v. Warden*, No. 3:19-cv-00057-GMG (N.D.W. Va. Mar. 26, 2021). 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