

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-6872

GARY DEAN BOONE,

Petitioner - Appellant,

v.

WARDEN, USP LEE COUNTY,

Respondent - Appellee,

and

H. J. MARBERRY, Warden; WARDEN, FCI, ALLENWOOD; UNITED
STATES OF AMERICA,

Respondents.

Appeal from the United States District Court for the Western
District of Virginia, at Roanoke. Samuel G. Wilson, District
Judge. (7:11-cv-00204-SGW)

Submitted: December 13, 2011 Decided: December 30, 2011

Before AGEE and DIAZ, Circuit Judges, and HAMILTON, Senior
Circuit Judge.

Affirmed by unpublished per curiam opinion.

Gary Dean Boone, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Gary Dean Boone appeals the district court's orders denying his 28 U.S.C.A. § 2241 (West 2006 & Supp. 2011) petition and denying his motion for reconsideration. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. Boone v. Warden, USP Lee County, No. 7:11-cv-00204-SGW (W.D. Va. May 5, 2011; May 25, 2011).

Additionally, we construe Boone's notice of appeal and informal brief as an application to file a second or successive 28 U.S.C.A. § 2255 (West Supp. 2011) motion. See Rice v. Rivera, 617 F.3d 802, 808 (4th Cir. 2010); United States v. Winestock, 340 F.3d 200, 208 (4th Cir. 2003). In order to obtain authorization to file a successive § 2255 motion, a prisoner must assert claims based on either: (1) newly discovered evidence, not previously discoverable by due diligence, that would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the movant guilty of the offense; or (2) a new rule of constitutional law, previously unavailable, made retroactive by the Supreme Court to cases on collateral review. 28 U.S.C.A. § 2255(h). Boone's claims do not satisfy either of these criteria. Therefore, we deny authorization to file a successive § 2255 motion.

Accordingly, we affirm. We deny Boone's motion to place the appeal in abeyance. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED