

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-7323

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SHANNON ANDRE PETERS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. Terrence W. Boyle, District Judge. (7:07-cr-00047-BO-1; 7:11-cv-00056-BO)

Submitted: April 30, 2013

Decided: May 13, 2013

Before MOTZ, KING, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Julia C. Ambrose, Wes J. Camden, BROOKS, PIERCE, MCLENDON, HUMPHREY & LEONARD, Raleigh, North Carolina, for Appellant. Thomas G. Walker, United States Attorney, Jennifer P. May-Parker, Yvonne V. Watford-McKinney, Assistant United States Attorneys, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Shannon Andre Peters appeals the district court's order denying relief on his 28 U.S.C.A. § 2255 (West Supp. 2012) motion. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. United States v. Peters, Nos. 7:07-cr-00047-BO; 7:11-cv-00056-BO (E.D.N.C. July 31, 2012). We note that subsequent to the district court's decision in this case, we decided United States v. Powell, 691 F.3d 554 (4th Cir. 2012). In Powell, we held that Carachuri-Rosendo v. Holder, 130 S. Ct. 2577 (2010), and by extension, United States v. Simmons, 649 F.3d 237 (4th Cir. 2011), were not retroactively applicable. Peters argues that this court improperly decided Powell because it did not recognize that Carachuri-Rosendo has substantive applications and should be applied retroactively to cases on collateral review. We decline Peters' invitation to re-examine the court's previous decision in Powell. See United States v. Guglielmi, 819 F.2d 451, 457 (4th Cir. 1987) (holding that only an en banc court, not a subsequent panel, has authority to overturn a previous panel's published decision). Under Powell, the rulings in Carachuri-Rosendo and Simmons are not applicable to Peters' § 2255 motion. Therefore the relief Peters seeks is not available on collateral review. Further, the retroactivity issue was not included in the partial grant of a certificate of

appealability by the district court and there was no motion for expansion of the certificate of appealability. See 4th Cir. R. 22(a)(2)(A). We therefore affirm the order.

We deny Peters' motion to appoint counsel. 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