

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-7463

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

AHMAD RASHAD TOMLINSON, a/k/a Tank,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (5:05-cr-00285-BO-1; 5:11-cv-00565-BO)

Submitted: January 22, 2013

Decided: January 24, 2013

Before WILKINSON, NIEMEYER, and THACKER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Ahmad Rashad Tomlinson, Appellant Pro Se. Jennifer P. May-Parker, Ethan A. Ontjes, Assistant United States Attorneys, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ahmad Rashad Tomlinson seeks to appeal the district court's orders denying relief on his 28 U.S.C.A. § 2255 (West Supp. 2012) motion and denying his Fed. R. Civ. P. 59(e) motion to alter or amend the judgment. Tomlinson was convicted of conspiracy to distribute and to possess with intent to distribute crack cocaine and was sentenced as a career offender in May 2006 to 180 months' imprisonment. He did not file a direct appeal.

In 2011, Tomlinson filed this § 2255 motion challenging his career offender designation in light of the Supreme Court's opinion in Carachuri-Rosendo v. Holder, 130 S. Ct. 2577 (2010), and our opinion in United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc). The district court held that Carachuri-Rosendo was retroactively applicable to cases on collateral review and that Tomlinson was entitled to equitable tolling to assert his claim under Simmons, but that ultimately Tomlinson's claim failed on the merits. At the time the district court issued its decision denying § 2255 relief, it did not have the benefit of our recent opinion in United States v. Powell, 691 F.3d 554 (4th Cir. 2012), where we held that Carachuri-Rosendo is not retroactively applicable to cases on collateral review. 691 F.3d at 559-60.

In light of Powell, Tomlinson's § 2255 motion is untimely. Accordingly, we deny a certificate of appealability and dismiss the appeal. 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.

DISMISSED