

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 14-7485

JAMAL REYES,

Petitioner - Appellant,

v.

WARDEN KIRBY,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at
Richmond. Henry E. Hudson, Senior District Judge. (3:14-cv-00209-HEH-MHL)

Submitted: December 20, 2018

Decided: January 15, 2019

Before AGEE, DIAZ, and QUATTLEBAUM, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Jamal Reyes, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jamal Reyes, a federal prisoner, appeals the district court's orders dismissing his 28 U.S.C. § 2241 (2012) petition and denying Reyes' Fed. R. Civ. P. 59(e) motion. We have reviewed the record and find no reversible error. Accordingly, although we grant leave to proceed in forma pauperis, we affirm the district court's orders. Reyes' § 2241 petition does not rely on a retroactively applicable change in substantive law subsequent to his direct appeal and first motion under 28 U.S.C. § 2255, therefore he cannot satisfy the requirements of *United States v. Wheeler*, 886 F.3d 415 (4th Cir. 2018). *See Reyes v. Kirby*, No. 3:14-cv-00209-HEH-MHL (E.D. Va. May 22, 2014; Sept. 4, 2014); *see also United States v. Wheeler*, 886 F.3d 415 (4th Cir. 2018) (holding that 28 U.S.C. § 2255 (2012) is inadequate and ineffective to test the legality of a sentence in part when "subsequent to the prisoner's direct appeal and first § 2255 motion, the . . . settled substantive law changed and was deemed to apply retroactively on collateral review"), *pet. for cert. filed*, __ U.S.L.W. __ (U.S. Oct. 4, 2018) (No. 18-420). 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