

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 16-7183**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN RICHARD ELINSKI,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:14-cr-00431-LMB-1; 1:16-cv-00065-LMB)

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Submitted: January 26, 2017

Decided: February 1, 2017

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Before SHEDD, DIAZ, and HARRIS, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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John Richard Elinski, Appellant Pro Se. Matthew John Gardner, Assistant United States Attorney, Alexandria, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

John Richard Elinski seeks to appeal the district court's order denying relief on his motion to amend his 28 U.S.C. § 2255 (2012) motion. Elinski's original § 2255 motion was dismissed by the district court on February 5, 2016, and his motion to amend was filed on June 2, 2016, after this court had dismissed the appeal of the original motion. Because Elinski's § 2255 motion was no longer pending before the district court, we find no error by the district court in denying Elinski's motion to amend. See United States v. Craycraft, 167 F.3d 451, 457 n.6 (8th Cir. 1999) (noting that the civil rules apply to § 2255 actions and that motions to amend are reviewed under Fed. R. Civ. P. 15 for an abuse of discretion). Accordingly, we deny leave to proceed in forma pauperis, deny Elinski's motion to submit evidence in support of appeal and expand the record, 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