

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 17-6713**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RONNIE D. RAINEY,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Clinton. James C. Dever III, Chief District Judge. (5:10-cr-00199-D-1)

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Submitted: September 26, 2017

Decided: September 28, 2017

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Before NIEMEYER and TRAXLER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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Ronnie D. Rainey, Appellant Pro Se. Jason Harris Cowley, Jennifer P. May-Parker, Evan Rikhye, Assistant United States Attorneys, Raleigh, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

## PER CURIAM:

Ronnie D. Rainey appeals from the district court's order denying his "Motion to Conduct an Evidentiary Hearing to Establish a Record for Judicial Review" as a successive 28 U.S.C. § 2255 (2012) motion. We conclude, as did the district court, that Rainey's motion is in substance a successive § 2255 motion; therefore, the order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012).

We have independently reviewed the record and conclude that Rainey has not made the requisite showing. Rainey's motion challenged the validity of his conviction and therefore was properly construed as a successive § 2255 motion. *See United States v. Winestock*, 340 F.3d 200, 207 (4th Cir. 2003) ("[A] motion directly attacking the prisoner's conviction or sentence will [generally] amount to a successive application . . ."). In the absence of pre-filing authorization from this court, the district court lacked jurisdiction to hear a successive § 2255 motion. *See* 28 U.S.C. §§ 2244(b)(3), 2255(h) (2012).

Accordingly, we deny a certificate of appealability and dismiss the appeal of the district court's order. 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*