

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 18-6137**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MATTHEW JAMES DURY,

Defendant - Appellant.

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**No. 18-6184**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MATTHEW JAMES DURY,

Defendant - Appellant.

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Appeals from the United States District Court for the Western District of North Carolina,  
at Asheville. Martin K. Reidinger, District Judge. (1:08-cr-00016-MR-1)

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Submitted: May 15, 2018

Decided: May 25, 2018

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Before KEENAN and WYNN, Circuit Judges, and SHEDD, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Matthew James Dury, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Matthew James Dury appeals the district court's orders construing his Fed. R. Civ. P. 60(b)(4) motion as an unauthorized successive 28 U.S.C. § 2255 (2012) motion and dismissing it for lack of jurisdiction, and denying his post-judgment motions. A certificate of appealability is not required to address the district court's jurisdictional dismissal of Dury's motion as a successive § 2255 motion. *See United States v. McRae*, 793 F.3d 392, 400 (4th Cir. 2015). We conclude that the district court properly construed Dury's request for Rule 60(b) relief as a successive § 2255 motion over which it lacked jurisdiction. *See Gonzalez v. Crosby*, 545 U.S. 524, 531-32 (2005). Additionally, we have reviewed the record and find no reversible error with respect to the denial of the post-judgment motions. We therefore affirm the denial of the post-judgment motions for the reasons stated by the district court. *United States v. Dury*, No. 1:08-cr-00016-MR-1 (W.D.N.C. Jan. 24, 2018; Feb. 14, 2018).

Additionally, we construe Dury's notice of appeal and informal brief as an application to file a second or successive § 2255 motion. *United States v. Winestock*, 340 F.3d 200, 208 (4th Cir. 2003). In order to obtain authorization to file a successive § 2255 motion, a prisoner must assert claims based on either:

- (1) newly discovered evidence that . . . would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
- (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h). Dury's claims do not satisfy either of these criteria. Therefore, we deny authorization to file a successive § 2255 motion.

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*