

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 18-6139**

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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: August 23, 2018

Decided: August 27, 2018

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Before DUNCAN and FLOYD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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John Richard Elinski, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

John Richard Elinski appeals the district court's order dismissing his Fed. R. Civ. P. 60(b) motion and denying his motions to seal, to compel and for an immediate preliminary injunction, and to supplement/amend his Rule 60(b) motion. The district court properly characterized the Rule 60(b) motion as an unauthorized successive 28 U.S.C. § 2255 (2012) motion and dismissed it for lack of jurisdiction. Accordingly, although we grant Elinski's motion to proceed in forma pauperis, we affirm the district court's order. *See United States v. McRae*, 793 F.3d 392, 400 (4th Cir. 2015) (holding that a certificate of appealability is unnecessary where a district court dismisses a Rule 60(b) motion as an unauthorized successive habeas motion).

Additionally, we construe Elinski'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). Elinski's claims do not satisfy either of these criteria. Therefore, we deny authorization to file a successive § 2255 motion.

With respect to the district court's denial of Elinski's other motions, we have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons

stated by the district court. *United States v. Elinski*, No. 1:14-cr-00431-LMB-1; 1:16-cv-00065-LMB (E.D. Va. Jan. 22, 2018). 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*