

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6162

DEDRIC DEVON SHERROD,

Petitioner - Appellant,

v.

SIR HAROLD W. CLARKE, Director, Virginia Department of Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca Beach Smith, District Judge. (2:12-cv-00174-RBS-RJK)

Submitted: June 13, 2019

Decided: June 18, 2019

Before WYNN and HARRIS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Dedric Devon Sherrod, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dedric Devon Sherrod appeals the district court's order treating his Fed. R. Civ. P. 60(b) motion as a successive 28 U.S.C. § 2254 (2012) petition, and dismissing it on that basis. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Sherrod v. Clarke*, No. 2:12-cv-00174-RBS-RJK (E.D. Va. Jan. 3, 2019). We deny a certificate of appealability as unnecessary. *See United States v. McRae*, 793 F.3d 392, 398-400 (4th Cir. 2015); *cf. Harbison v. Bell*, 556 U.S. 180, 194 (2009). We grant leave to proceed in forma pauperis. We deny Sherrod's motion to consolidate this appeal with No. 19-6364.

Additionally, we construe Sherrod's notice of appeal and informal brief as an application to file a second or successive § 2254 petition. *United States v. Winestock*, 340 F.3d 200, 208 (4th Cir. 2003). In order to obtain authorization to file a successive § 2254 petition, a prisoner must assert claims based on either: (1) a new rule of constitutional law, previously unavailable, made retroactive by the Supreme Court to cases on collateral review; or (2) newly discovered evidence, not previously discoverable by due diligence, that would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the petitioner guilty of the offense. 28 U.S.C. § 2244(b)(2) (2012). Sherrod's claims do not satisfy either of these criteria. Therefore, we deny authorization to file a successive § 2254 petition.

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