

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**No. 19-7747**

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TITO LAMONT ANDERSON,

Petitioner - Appellant,

v.

JUSTIN ANDREWS, Warden, FCI Butner 2,

Respondent - Appellee.

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Appeal from the United States District Court for the Eastern District of North Carolina, at  
Raleigh. Terrence W. Boyle, Chief District Judge. (5:18-hc-02215-BO)

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Submitted: May 21, 2020

Decided: May 26, 2020

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Before AGEE and QUATTLEBAUM, Circuit Judges, and TRAXLER, Senior Circuit  
Judge.

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Affirmed by unpublished per curiam opinion.

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Tito Lamont Anderson, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Tito Lamont Anderson, a federal prisoner, appeals the district court's orders dismissing without prejudice for lack of jurisdiction Anderson's 28 U.S.C. § 2241 (2018) petition in which Anderson sought to challenge his career offender sentence by way of the savings clause in 28 U.S.C. § 2255(e) (2018), and denying Anderson's Fed. R. Civ. P. 59(e) motion to alter or amend judgment. We affirm.

Pursuant to § 2255(e), a prisoner may challenge his sentence in a traditional writ of habeas corpus pursuant to § 2241 if a § 2255 motion would be inadequate or ineffective to test the legality of his detention. Specifically:

[Section] 2255 is inadequate and ineffective to test the legality of a sentence when: (1) at the time of sentencing, settled law of this circuit or the Supreme Court established the legality of the sentence; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the aforementioned settled substantive law changed and was deemed to apply retroactively on collateral review; (3) the prisoner is unable to meet the gatekeeping provisions of § 2255(h)(2) for second or successive motions; and (4) due to this retroactive change, the sentence now presents an error sufficiently grave to be deemed a fundamental defect.

*United States v. Wheeler*, 886 F.3d 415, 429 (4th Cir. 2018). Upon review, we agree with the district court that Anderson, who was sentenced under an advisory Sentencing Guidelines scheme, cannot satisfy the fourth prong of *Wheeler*. See *Braswell v. Smith*, 952 F.3d 441, 450 (4th Cir. 2020) (reaffirming this court's holding in *United States v. Foote*, 784 F.3d 931, 932, 941 (4th Cir. 2015), that "a 'fundamental defect or a complete miscarriage of justice' has not occurred where the petitioner was sentenced as a career offender 'under an advisory Guidelines scheme'").

Accordingly, although we grant Anderson leave to proceed on appeal in forma pauperis, we affirm the appealed-from orders for the reasons stated by the district court. *Anderson v. Andrews*, No. 5:18-hc-02215-BO (E.D.N.C. Oct. 7, 2019; Nov. 12, 2019). We deny Anderson's motion to appoint counsel. 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*