

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 20-7483**

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ANTONIO LENARD BUEY,

Petitioner - Appellant,

v.

WARDEN, FCI McDowell,

Respondent - Appellee.

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Appeal from the United States District Court for the Southern District of West Virginia, at Bluefield. David A. Faber, Senior District Judge. (1:19-cv-00721)

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Submitted: February 23, 2021

Decided: February 26, 2021

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Before MOTZ, KEENAN, and HARRIS, Circuit Judges.

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Affirmed as modified by unpublished per curiam opinion.

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Antonio Lenard Buey, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Antonio Lenard Buey, a federal prisoner,\* appeals the district court's order accepting the recommendation of the magistrate judge and dismissing Buey's 28 U.S.C. § 2241 petition, in which Buey sought to challenge his sentence by way of the savings clause in 28 U.S.C. § 2255. 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.

[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).

We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's judgment. However, we modify the dismissal order, *Buey v. Warden, FCI McDowell*, No. 1:19-cv-00721 (S.D.W. Va. Sept. 25, 2020), to reflect a dismissal without prejudice for lack of jurisdiction, *see Wheeler*, 886 F.3d at 426, and affirm the order as modified, 28 U.S.C. § 2106. We dispense with oral argument because the facts

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\* As a federal prisoner, Buey need not obtain a certificate of appealability to challenge the district court's ruling on his petition. *See* 28 U.S.C. § 2253(c)(1).

and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED AS MODIFIED*