

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7341

FREDERICK LYNN SELLERS,

Petitioner - Appellant,

v.

BRYAN K. DOBBS, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Orangeburg. R. Bryan Harwell, Chief District Judge. (5:20-cv-01683-RBH)

Submitted: February 17, 2022

Decided: February 23, 2022

Before AGEE and RUSHING, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed as modified by unpublished per curiam opinion.

Frederick Lynn Sellers, Appellant Pro Se. Lauren L. Hummel, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Florence, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Frederick Lynn Sellers, a federal prisoner, appeals the district court's order adopting the recommendation of the magistrate judge and dismissing for lack of jurisdiction his 28 U.S.C. § 2241 petition in which he sought to challenge his conviction by way of the savings clause in 28 U.S.C. § 2255. Pursuant to § 2255(e), a prisoner may challenge his conviction 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 conviction when: (1) at the time of conviction, settled law of this circuit or the Supreme Court established the legality of the conviction; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the substantive law changed such that the conduct of which the prisoner was convicted is deemed not to be criminal; and (3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law.

In re Jones, 226 F.3d 328, 333-34 (4th Cir. 2000).

We have reviewed the record and, following the Supreme Court's decision in *Greer v. United States*, 141 S. Ct. 2090 (2021), find no reversible error in the district court's determination that Sellers failed to demonstrate that 28 U.S.C. § 2255 is an inadequate or ineffective means of challenging his conviction. However, because the district court lacked jurisdiction over Sellers' § 2241 petition, *Rice v. Rivera*, 617 F.3d 802, 807-08 (4th Cir. 2010) (per curiam), we modify the court's order to reflect that the dismissal of Sellers' petition is without prejudice and affirm the order, *Sellers v. Dobbs*, No. 5:20-cv-01683-RBH (D.S.C. Sept. 7, 2021), as modified, *see* 28 U.S.C. § 2106; *S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 185 (4th Cir. 2013). We deny Sellers' motion to appoint counsel and

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 AS MODIFIED