

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6771

KEWIA TYRONE HUNTER,

Petitioner - Appellant,

v.

RICHARD HUDGINS,

Respondent - Appellee.

Appeal from the United States District Court for the Northern District of West Virginia, at
Wheeling. John Preston Bailey, District Judge. (5:21-cv-00004-JPB-JPM)

Submitted: November 29, 2022

Decided: January 4, 2023

Before AGEE and HEYTENS, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Kewia Tyrone Hunter, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kewia Tyrone Hunter, a federal prisoner, appeals the district court's order dismissing for lack of jurisdiction his 28 U.S.C. § 2241 petition in which he 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 a prisoner's detention." *Hahn v. Moseley*, 931 F.3d 295, 301 (4th Cir. 2019). "In evaluating substantive claims under the savings clause, . . . we look to the substantive law of the circuit where a defendant was convicted." *Id.* But "we apply our procedural law," *id.*, "in determining whether to grant habeas relief under the savings clause," *id.* at 300. Thus, to challenge his sentence under § 2241, Hunter must establish that:

(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 our review of the record, we conclude that Hunter fails to satisfy the *Wheeler* standard. Accordingly, we affirm. We deny Hunter's motions to appoint counsel and to stay the proceedings. 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