

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7433

RICHARD L. GATHERCOLE,

Petitioner - Appellant,

v.

UNITED STATES OF AMERICA; FEDERAL BUREAU OF PRISONS,

Respondents - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at
Richmond. M. Hannah Lauck, District Judge. (3:22-cv-00384-MHL-MRC)

Submitted: May 31, 2023

Decided: June 6, 2023

Before KING and HEYTENS, Circuit Judges, and MOTZ, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Richard L. Gathercole, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Richard L. Gathercole, a federal prisoner, appeals the district court's orders dismissing without prejudice 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 and denying his motion to reconsider. 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 find no reversible error. Accordingly, we affirm the district court's orders. *Gathercole v. United States*, No. 3:22-cv-00384-MHL-MRC (E.D. Va. Sept. 19 & Dec. 13, 2022). We deny Gathercole's motions for appointment of counsel and for bail/release pending appeal 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