

UNPUBLISHED

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

No. 19-7386

EUGENE PETER SCHULER,

Petitioner - Appellant,

v.

HAROLD CLARKE, Director, VDOC,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:16-cv-01151-LMB-JFA)

Submitted: February 25, 2020

Decided: March 6, 2020

Before AGEE, WYNN, and FLOYD, Circuit Judges.

Dismissed in part and affirmed in part by unpublished per curiam opinion.

Eugene Peter Schuler, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Eugene Peter Schuler seeks to appeal the district court's orders denying his 28 U.S.C. § 2254 (2018) petition, his Fed. R. Civ. P. 60(b)(6) motion, and his request for leave to amend his Rule 60(b)(6) motion. We dismiss in part and affirm in part.

Beginning with the first two orders, we dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed. In civil cases, parties have 30 days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." *Bowles v. Russell*, 551 U.S. 205, 214 (2007).

The district court entered its order denying Schuler's § 2254 petition on November 9, 2016, and denied his Rule 60(b) motion on July 19, 2019. Schuler filed the notice of appeal on August 30, 2019.¹ Because Schuler failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period as to the order denying the § 2254

¹ For purposes of this appeal, we assume that the date appearing on the notice of appeal's cover page is the earliest date Schuler could have delivered the notice to prison officials for mailing to the court. Fed. R. App. P. 4(c)(1); *Houston v. Lack*, 487 U.S. 266, 276 (1988).

petition or the order denying the Rule 60(b) motion, we dismiss the appeal from those orders.²

Turning to Schuler's appeal from the denial of his request for leave to amend the Rule 60(b) motion, we confine our review to the issues raised in the Appellant's brief. *See* 4th Cir. R. 34(b). Because Schuler's informal brief does not challenge the basis for the district court's denial of his request for leave to amend his Rule 60(b) motion, Schuler has forfeited appellate review of that order. *See Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014) ("The informal brief is an important document under Fourth Circuit rules; our review is limited to issues preserved in that brief."). Accordingly, we affirm the district court's order denying Schuler's request for leave to amend the Rule 60(b) motion.

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.

*DISMISSED IN PART,
AFFIRMED IN PART*

² Additionally, we note that Schuler previously appealed the November 9, 2016, order, *see Schuler v. Clarke*, 689 F. App'x 186 (4th Cir. 2017) (No. 16-7762), and is not entitled to file a second appeal from that order.

FILED: March 6, 2020

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J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed in part. The appeal is dismissed in part.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

**Eugene Peter Schuler,
Petitioner,**

v.

**Harold Clarke,
Respondent.**

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1:16cv1151 (LMB/JFA)

ORDER

By Memorandum Opinion and Order entered on November 9, 2016, this Court dismissed as time-barred Virginia inmate Eugene Peter Schuler's pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. See [Dkt. No. 8]. The United States Court of Appeals for the Fourth Circuit affirmed that dismissal, and the United States Supreme Court denied Schuler a writ of certiorari. See Schuler v. Clarke, 689 F. App'x 186 (4th Cir. 2017), cert. denied, 2018 U.S. LEXIS 516 (Jan. 8, 2018).

Last month, this Court denied Schuler's second motion for reconsideration pursuant to Federal Rule of Civil Procedure 60(b). See [Dkt. No. 44 (denying Dkt. No. 42)]. See also [Dkt. No. 23 (denying Dkt. No. 22 (Schuler's first motion for reconsideration))].

Schuler has now filed a two-page Request for Leave to Amend. See [Dkt. No. 45]. Schuler's filing does not state clearly how he proposes to amend his second motion for reconsideration, only that he would like an opportunity to do so. See id. Because Schuler has no entitlement to amend his second motion for reconsideration and because it would not serve the interests of justice to prolong this case needlessly, Schuler's motion will be denied. Accordingly, it is hereby

ORDERED that Schuler's Request for Leave to Amend [Dkt. No. 45] be and is DENIED.

To appeal this decision, Schuler must file a written notice of appeal with the Clerk's office within thirty (30) days of the date of this Order. See Fed. R. App. P. 4(a). A written notice of appeal is a short statement indicating a desire to appeal and including the date of the Order Schuler wishes to appeal. Failure to file a timely notice of appeal waives the right to appeal this decision.

The Clerk is directed to send a copy of this Order to Schuler.

Entered this 5th day of August, 2019.

Alexandria, Virginia

/s/ LMB
Leonie M. Brinkema
United States District Judge

FILED: April 7, 2020

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O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Agee, Judge Wynn, and Judge Floyd.

For the Court

/s/ Patricia S. Connor, Clerk