

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-6485

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARY M. MOONEY,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Beaufort.
David C. Norton, District Judge. (9:14-cr-00054-DCN-2; 9:19-cv-02952-DCN)

Submitted: July 20, 2023

Decided: July 25, 2023

Before NIEMEYER and THACKER, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Mary M. Mooney, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Mary M. Mooney appeals the district court's order construing her motion to reconsider as a Fed. R. Civ. P. 60(b) motion for relief from judgment, determining that it was an unauthorized, successive 28 U.S.C. § 2255 motion, and dismissing it on that basis.¹ Our review of the record reveals no reversible error in the district court's conclusion that Mooney's motion was not timely filed under Fed. R. Civ. P. 59(e) and, thus, was properly considered to have been filed pursuant to Rule 60(b). We further conclude that the district court properly construed Mooney's Rule 60(b) motion as a successive § 2255 motion over which it lacked jurisdiction because she had not obtained prefiling authorization from this court. *See* 28 U.S.C. §§ 2244(b)(3)(A), 2255(h); *McRae*, 793 F.3d at 397-400. Accordingly, we affirm the district court's order.²

Consistent with our decision in *United States v. Winestock*, 340 F.3d 200, 208 (4th Cir. 2003), we construe Mooney's notice of appeal and informal brief as an application to file a second or successive § 2255 motion. Upon review, we conclude that Mooney's claims do not meet the relevant standard. *See* 28 U.S.C. § 2255(h). We therefore deny authorization to file a successive § 2255 motion.

¹ A certificate of appealability is not required to appeal the district court's jurisdictional categorization of a Rule 60(b) motion as an unauthorized, successive § 2255 motion. *United States v. McRae*, 793 F.3d 392, 400 (4th Cir. 2015).

² Because Mooney's motion to reconsider was filed more than 28 days after entry of the district court's order denying her § 2255 motion, that denial order is not properly before us in this appeal. *See* Fed. R. App. P. 4(a)(4)(A)(iv), (vi); *Aikens v. Ingram*, 652 F.3d 496, 501 (4th Cir. 2011) (en banc) (“[A]n appeal from denial of Rule 60(b) relief does not bring up the underlying judgment for review.” (internal quotation marks omitted)).

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

FILED: July 25, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUITNo. 23-6485, US v. Mary Mooney
9:14-cr-00054-DCN-2, 9:19-cv-02952-DCN

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: The time to file a petition for writ of certiorari runs from the date of entry of the judgment sought to be reviewed, and not from the date of issuance of the mandate. If a petition for rehearing is timely filed in the court of appeals, the time to file the petition for writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. See Rule 13 of the Rules of the Supreme Court of the United States; www.supremecourt.gov.

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN

BANC: A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

FILED: July 25, 2023

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(9:19-cv-02952-DCN)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

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Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

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 DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

| | | |
|--------------------------|---|------------------------------------|
| MARY MOORE MOONEY |) | |
| <i>Petitioner,</i> |) | |
| |) | Criminal Action No. 9:14-CR-0054-2 |
| V |) | |
| |) | |
| |) | NOTICE OF APPEAL |
| UNITED STATES OF AMERICA |) | |
| <i>Respondent,</i> |) | |

Notice is hereby given that the petitioner, Mary Moore Mooney, intends to appeal this Courts Order dated 4/20/23 on May 6, 2023 denying her motion under 18 USC 2255 to the United States Court of Appeals for the Fourth Circuit this 6 day of May 2023.

Attached is an affidavit attesting to the date Petitioner received the Order Dated 4/20/23.

Mary M Mooney

Mary M. Mooney

Dated May 6, 2023

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FILED: September 29, 2023

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FOR THE FOURTH CIRCUIT

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(9:14-cr-00054-DCN-2)
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UNITED STATES OF AMERICA

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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 Niemeyer, Judge Thacker and Senior Judge Keenan.

For the Court

/s/ Nwamaka Anowi, Clerk