

UNPUBLISHED

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

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

CARLOS RAFAEL CALLEJA,
Defendant-Appellant.

No. 00-7618

Appeal from the United States District Court
for the Western District of Virginia, at Roanoke.
James C. Turk, District Judge.
(CR-86-28, CA-00-639-7)

Submitted: January 11, 2001

Decided: January 24, 2001

Before NIEMEYER, WILLIAMS, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

COUNSEL

Carlos Rafael Calleja, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Carlos R. Calleja seeks to appeal the district court's order denying his motion filed under former Rule 35(a) of the Federal Rules of Criminal Procedure, which the district court construed as a motion under 28 U.S.C.A. § 2255 (West Supp. 2000), and the order denying his motion for reconsideration. We dismiss the appeal from the denial of the § 2255 motion because the appeal was untimely filed. The district court entered its order denying § 2255 relief on August 11, 2000. Calleja's notice of appeal was filed on November 9, 2000. Because Calleja did not file his notice of appeal within the sixty-day appeal period provided by Fed. R. App. P. 4(a)(1), and the district court did not extend or reopen the appeal period under Fed. R. App. P. 4(a)(5), (6), we dismiss this portion of the appeal for lack of jurisdiction.

With regard to Calleja's motion for reconsideration, we find that although the district court considered the motion as one filed under Fed. R. Civ. P. 59(e), it should have been construed as one filed under Fed. R. Civ. P. 60(b), because the motion was filed more than ten days after entry of judgment. Fed. R. Civ. P. 59(e), 60; *CNF Constructors, Inc. v. Donohoe Constr. Co.*, 57 F.3d 395, 400 (4th Cir. 1995). Where, as here, the motion seeks "reconsideration of legal issues already addressed in an earlier ruling, the motion 'is not authorized by Rule 60(b).'" *CNF Constructors, Inc.*, 57 F.3d at 401 & n.2 (quoting *United States v. Williams*, 674 F.2d 310, 313 (4th Cir. 1982)). The district court therefore did not abuse its discretion in denying the motion. *Heyman v. M.L. Mktg. Co.*, 116 F.3d 91, 94 (4th Cir. 1997) (stating standard of review).

Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED