

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-7679

MICHAEL EDWARD MILLS,

Petitioner - Appellant,

versus

JOSEPH M. BROOKS, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, District Judge. (CA-00-551-3)

Submitted: February 22, 2001

Decided: March 1, 2001

Before WIDENER and WILLIAMS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed in part and affirmed in part by unpublished per curiam opinion.

Michael Edward Mills, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Michael Edward Mills appeals the district court's order dismissing without prejudice his 28 U.S.C. § 2241 (1994) petition, construed as a 28 U.S.C.A. § 2255 (West Supp. 2000) motion, and a subsequent order denying relief on his Fed. R. Civ. P. 60(b) motion for reconsideration.

The notice of appeal was filed within sixty days of the denial of Mills' Rule 60(b) motion, but outside of the appeal period for the underlying dismissal. Because the notice of appeal was untimely as to the underlying order, we do not have jurisdiction to consider that order, and we dismiss the appeal as to that order. Browder v. Director, Dep't of Corr., 434 U.S. 257, 268-69 (1987); Dove v. CODESCO, 569 F.2d 807, 809 (4th Cir. 1978).

We find that the district court's denial of Mills' Rule 60(b) motion was not an abuse of discretion. United States v. Williams, 674 F.2d 310, 312 (4th Cir. 1982). Accordingly, we affirm the district court's denial of Mills' Rule 60(b) motion. 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 IN PART AND AFFIRMED IN PART