

**ON PETITION FOR REHEARING  
UNPUBLISHED  
UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

MICHAEL L. MOORE,  
*Defendant-Appellant.*

No. 01-7961

Appeal from the United States District Court  
for the Eastern District of Virginia, at Alexandria.  
James C. Cacheris, Senior District Judge.  
(CR-97-362-A, CA-00-1776-AM)

Submitted: April 22, 2002

Decided: May 17, 2002

Before NIEMEYER, WILLIAMS, and MICHAEL, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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**COUNSEL**

Michael L. Moore, Appellant Pro Se. Thomas More Hollenhorst,  
Assistant United States Attorney, Alexandria, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

**OPINION**

## PER CURIAM:

Michael Moore petitions for rehearing of our decision dismissing his appeal of the district court's order denying of his motion filed under 28 U.S.C.A. § 2255 (West Supp. 2001), and a subsequent order denying his motion for reconsideration, which we construed as a motion filed under Fed. R. Civ. P. 60(b). Our decision found that Moore timely appealed only from the order denying reconsideration, and accordingly dismissed his appeal from the underlying order as untimely. Giving Moore every benefit of the doubt as to when he delivered his motion for reconsideration to prison officials, however, we will assume that his motion for reconsideration was timely under Fed. R. Civ. P. 59(e). *See Houston v. Lack*, 487 U.S. 266, 276 (1988).

Because a timely appeal from an order denying a Rule 59 motion brings both the Rule 59 order and the underlying order within the jurisdiction of the appeals court, *see In re Burnley*, 988 F.2d 1, 3 (4th Cir. 1992), we grant rehearing to consider the merits of Moore's appeal from the underlying order in this case.

We have carefully reviewed the record and find Moore's appeal is lacking in merit. We therefore deny a certificate of appealability and dismiss the appeal on the reasoning of the district court. *See United States v. Moore*, Nos. CR-97-362-A; CA-00-1776-AM (E.D. Va. July 23, 2001). We deny Moore's request for rehearing en banc. 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*