

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-7061

KENNETH LEO BUHOLTZ, on behalf of his minor children J.C.G. and L.S.B.,

Plaintiff - Appellant,

v.

BART CARROLL, Chief Investigator; DELIA GUILLAMONDEGUI, Supervisor;
JOHN SPECIA, Commissioner; BILLY LANIER, Deputy Sheriff; TERRY BOX,
Sheriff; W. KENNETH PAXTON, Attorney General,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at
Richmond. Henry E. Hudson, District Judge. (3:15-cv-00520-HEH-RCY)

Submitted: December 29, 2017

Decided: January 12, 2018

Before KING, SHEDD, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Kenneth Leo Buholtz, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kenneth Leo Buholtz appeals the district court's order denying relief on his Federal Rule of Civil Procedure 60(b)(6) motion for reconsideration. A Rule 60(b)(6) motion must "be filed on just terms and within a reasonable time." *Aikens v. Ingram*, 652 F.3d 496, 501 (4th Cir. 2011) (internal quotation marks omitted). A movant seeking relief from a judgment under Rule 60(b) must make a threshold showing of "timeliness, a meritorious defense, a lack of unfair prejudice to the opposing party, and exceptional circumstances." *Dowell v. State Farm Fire & Cas. Auto. Ins. Co.*, 993 F.2d 46, 48 (4th Cir. 1993) (internal quotation marks omitted). Rule 60(b)(6), however, "does not serve as a substitute for appeal," and a petitioner who chooses not to appeal the district court's original judgment likely will not be able to demonstrate exceptional circumstances. *Aikens*, 652 F.3d at 502.

We conclude that the district court did not abuse its discretion in finding that Buholtz's Rule 60(b)(6) motion, filed roughly eighteen months after the court entered judgment dismissing his 42 U.S.C. § 1983 (2012) complaint, was untimely. *See McLawhorn v. John W. Daniel & Co.*, 924 F.2d 535, 538 (4th Cir. 1991) (per curiam) (holding district court did not abuse its discretion in denying as untimely Rule 60(b) motion filed three and one-half months after original judgment). Accordingly, we affirm. We deny Buholtz's motion to suspend proceedings pending his prison transfer. 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