

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

BRETT C. KIMBERLIN,

Petitioner-Appellant,

v.

STEPHEN DEWALT, Warden of FCI-

Petersburg,

Respondent-Appellee,

No. 00-6001

and

UNITED STATES PAROLE COMMISSION,

Respondent.

Appeal from the United States District Court

for the District of Maryland, at Greenbelt.

Alexander Williams, Jr., District Judge.

(CA-97-3829-AW)

Submitted: May 16, 2000

Decided: May 26, 2000

Before WILLIAMS and TRAXLER, Circuit Judges,

and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

COUNSEL

Brett C. Kimberlin, Appellant Pro Se. Lynne Ann Battaglia, United States Attorney, Tamera Lynn Fine, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Brett C. Kimberlin appeals from the district court's order denying his motion filed under Fed. R. Civ. P. 60(b), in which he sought to vacate the court's order denying his petition filed under 28 U.S.C. § 2241 (1994). We have reviewed the record and the district court's opinion and find no abuse of discretion. See Heyman v. M.L. Mktg. Co., 116 F.3d 91, 94 (4th Cir. 1997) (stating standard of review).

Because Kimberlin's motion alleged newly discovered evidence, it is properly construed as a motion under Rule 60(b)(2). As such, it must be filed not more than one year after the entry of judgment. See Fed. R. Civ. P. 60(b). The district court entered its order denying the § 2241 petition on May 26, 1998.* Kimberlin did not file his Rule 60(b) motion until June 24, 1999, more than one year later. We therefore find that the motion was untimely filed.

Accordingly, we affirm the district court's denial of Kimberlin's Rule 60(b) motion on that ground. See Shafer v. Preston Mem'l Hosp. Corp., 107 F.3d 274, 275 n.1 (4th Cir. 1997) ("We have consistently recognized that we may affirm a district court's decision on different grounds than those employed by the district court.") (citations omitted). 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.

AFFIRMED

*The district court entered an amended order on June 30, 1998.

Because the amendment merely substituted the proper party respondent, we calculated the one-year period from the date of the original judgment. See Federal Trade Comm'n v. Minneapolis-Honeywell Regulator Co., 344 U.S. 206, 211-12 (1952); Kokomo Tube Co. v. Dayton Equip. Servs. Co., 123 F.3d 616, 623-24 (7th Cir. 1997) (finding that judgment substituting one party for party in favor of whom district court granted judgment was clerical error because court's intent was clear from order).