

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-7123

HARRY NIE,

Plaintiff - Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Raymond A. Jackson, District Judge. (2:19-cv-00481-RAJ-DEM)

Submitted: December 22, 2020

Decided: December 29, 2020

Before NIEMEYER, FLOYD, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Harry Nie, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Harry Nie appeals the district court's orders: (1) accepting the recommendation of the magistrate judge and denying his Fed. R. Civ. P. 60(b) motion for relief from judgment and construing his amendment as an unauthorized, successive 28 U.S.C. § 2254 petition and dismissing it for lack of jurisdiction,* and (2) denying his motion for judgment as a matter of law. We have reviewed the record and find no reversible error. Accordingly, we affirm the denial of Nie's Rule 60(b) motion and his motion for judgment as a matter of law for the reasons stated by the district court. *Nie v. Commonwealth of Virginia*, No. 2:19-cv-00481-RAJ-DEM (E.D. Va. filed June 11, 2020 and entered June 12, 2020 & July 6, 2020).

Additionally, our review of the record confirms that the district court properly construed Nie's amendment to his Rule 60(b) motion as a successive and unauthorized § 2254 petition over which it lacked jurisdiction. *See* 28 U.S.C. § 2244(b)(3)(A); *McRae*, 793 F.3d at 397-400. Accordingly, we affirm the district court's order dismissing Nie's amendment to the Rule 60(b) motion.

Consistent with our decision in *United States v. Winestock*, 340 F.3d 200, 208 (4th Cir. 2003), *abrogated on other grounds by McRae*, 793 F.3d at 400 & n.7, we construe Nie's notice of appeal and informal brief as an application to file a second or successive § 2254 petition. Upon review, we conclude that Nie's claims do not meet the relevant

* A certificate of appealability is not required to appeal the district court's jurisdictional categorization of a Rule 60(b) motion as an unauthorized, successive habeas petition. *United States v. McRae*, 793 F.3d 392, 400 (4th Cir. 2015).

standard. *See* 28 U.S.C. § 2244(b)(2). We therefore deny authorization to file a successive § 2254 petition.

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