

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 18-6731

BRIAN DAVID STREBE,

Petitioner - Appellant,

v.

GENE M. JOHNSON, Director of Virginia Department of Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at
Alexandria. T.S. Ellis, III, Senior District Judge. (1:10-cv-00704-TSE-TRJ)

Submitted: August 16, 2018

Decided: August 21, 2018

Before WYNN and DIAZ, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Brian David Strebe, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Brian David Strebe appeals the district court's order dismissing his Fed. R. Civ. P. 60(b) motion for reconsideration of the court's order denying relief on his 28 U.S.C. § 2254 (2012) petition. We have reviewed the record and conclude that the district court correctly determined that Strebe's motion was not a "true Rule 60(b)" motion, but in substance a successive § 2254 petition. *See United States v. McRae*, 793 F.3d 392, 397-99 (4th Cir. 2015); *see also Gonzalez v. Crosby*, 545 U.S. 524, 531-32 (2005) (explaining how to differentiate a true Rule 60(b) motion from an unauthorized successive habeas corpus motion). Therefore, we conclude that Strebe is not required to obtain a certificate of appealability to appeal the district court's order. *See McRae*, 793 F.3d at 397-99. However, in the absence of prefiling authorization, the district court lacked jurisdiction to hear a successive § 2254 petition. *See* 28 U.S.C. § 2244(b)(3) (2012).

Accordingly, we affirm the district court's order. 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 in the decisional process.

AFFIRMED