

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7398

RYRICKA NIKITA CUSTIS,

Petitioner - Appellant,

v.

HAROLD W. CLARKE, Director, Virginia Department of Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Mark S. Davis, Chief District Judge. (2:19-cv-00214-MSD-RJK)

Submitted: March 19, 2020

Decided: April 20, 2020

Before FLOYD and RICHARDSON, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Ryricka Nikita Custis, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ryricka Nikita Custis appeals the district court's order accepting the recommendation of the magistrate judge, construing Custis' Fed. R. Civ. P. 60(b), (d) motion for relief from judgment as a 28 U.S.C. § 2254 (2018) petition, and dismissing it without prejudice as successive.* Our review of the record confirms that the district court properly construed Custis' Rule 60(b), (d) motion as a successive § 2254 petition over which it lacked jurisdiction because Custis failed to obtain prefiling authorization from this court. *See* 28 U.S.C. § 2244(b)(3)(A) (2018); *McRae*, 793 F.3d at 397-400. Accordingly, we grant leave to proceed in forma pauperis and affirm the district court's order.

Consistent with our decision in *United States v. Winestock*, 340 F.3d 200, 208 (4th Cir. 2003), we construe Custis' notice of appeal and informal brief as an application to file a second or successive § 2254 petition. Upon review, we conclude that Custis' claims do not meet the relevant standard. *See* 28 U.S.C. § 2244(b)(2) (2018). 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

* 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).