

UNPUBLISHED

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

No. 20-6345

KEVIN HERRIOTT,

Plaintiff - Appellant,

v.

WAYNE MCCABE, Warden, Kershaw Correctional Institution,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Greenville. David C. Norton, District Judge. (6:19-cv-00803-DCN)

Submitted: July 23, 2020

Decided: July 28, 2020

Before WILKINSON, MOTZ, and RICHARDSON, Circuit Judges.

Remanded by unpublished per curiam opinion.

Kevin Herriott, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kevin Herriott seeks to appeal the district court's order adopting the recommendation of the magistrate judge and dismissing as untimely Herriott's 28 U.S.C. § 2254 (2018) petition. After noting his appeal, Herriott timely filed a Fed. R. Civ. P. 60(b)(1) motion, which remains pending in the district court. Consistent with *Fobian v. Storage Tech. Corp.*, 164 F.3d 887, 890-91 (4th Cir. 1999), we order a limited remand and direct the district court to promptly consider the Rule 60(b)(1) motion. Once the court denies or indicates its intention to grant the motion, *see id.* at 891, the record, as supplemented, will then be returned to this court for further consideration. In ordering this remand, we express no opinion as to the merits of Herriott's motion.

REMANDED