

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7350

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARC PIERRE HALL, a/k/a Marc Valeriano, a/k/a Fella,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Frank D. Whitney, District Judge. (3:95-cr-00005-FDW-1; 3:99-cv-00061-FDW)

Submitted: November 18, 2021

Decided: November 22, 2021

Before MOTZ, THACKER, and HARRIS, Circuit Judges.

Affirmed as modified by unpublished per curiam opinion.

Marc Pierre Hall, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Marc Pierre Hall appeals the district court's order construing his Fed. R. Civ. P. 60(d)(1) motion as an unauthorized, successive 28 U.S.C. § 2255 motion and dismissing it for lack of jurisdiction.* Our review of the record confirms that the district court properly construed Hall's Rule 60(d)(1) motion as a successive § 2255 motion over which it lacked jurisdiction because Hall failed to obtain prefiling authorization from this court. *See* 28 U.S.C. §§ 2244(b)(3)(A), 2255(h); *McRae*, 793 F.3d at 397-400. The dismissal, however, "must be one without prejudice, because a court that lacks jurisdiction has no power to adjudicate and dispose of a claim on the merits." *S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 185 (4th Cir. 2013). Accordingly, we affirm as modified to reflect that Hall's motion is dismissed without prejudice for lack of jurisdiction. We deny Hall's motion for appointment of counsel.

Consistent with our decision in *United States v. Winestock*, 340 F.3d 200, 208 (4th Cir. 2003), we construe Hall's notice of appeal and informal brief as an application to file a second or successive § 2255 motion. Upon review, we conclude that his claims do not meet the relevant standard. *See* 28 U.S.C. § 2255(h). We therefore deny authorization to file a successive § 2255 motion.

* A certificate of appealability is not required to appeal the district court's jurisdictional categorization of a Rule 60 motion as an unauthorized, successive § 2255 motion. *United States v. McRae*, 793 F.3d 392, 400 (4th Cir. 2015).

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 AS MODIFIED