

Document 1

Document 2

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

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July 20, 2005

Fred L. Borch III
U. S. DISTRICT COURT
P. O. Box 25670
Raleigh, NC 27611

Re: 05-6279 US v. Everette
CR-01-68
CA-04-358

Dear Clerk:

Enclosed is an opinion of this Court remanding the case for limited purpose. The record on appeal is being returned for the district court's use. Please return the record, as supplemented, to this Court after completing the determination on remand.

Yours truly,

PATRICIA S. CONNOR
Clerk

/s/ Margaret F. Thomas

By: _____
Deputy Clerk

cc: Rudolf A. Renfer Jr.
Calvin Lee Everette

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-6279

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

CALVIN LEE EVERETTE,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, Chief District Judge. (CR-01-68; CA-04-358)

Submitted: June 27, 2005

Decided: July 20, 2005

Before MOTZ and GREGORY, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Remanded by unpublished per curiam opinion.

Calvin Lee Everette, Appellant Pro Se. Rudolf A. Renfer, Jr., Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Calvin Lee Everette seeks to appeal the district court's order dismissing his motion under 28 U.S.C. § 2255 (2000). The notice of appeal was received in the district court shortly after expiration of the appeal period. Under Fed. R. App. P. 4(c)(1) and Houston v. Lack, 487 U.S. 266 (1988), the notice is considered filed as of the date Everette properly delivered it to prison officials for mailing to the court. The record does not reveal if or when Everette complied with the requirements of Fed. R. App. P. 4(c)(1). Accordingly, we remand the case for the district court to obtain this information from the parties and to determine whether the filing was timely under Fed. R. App. P. 4(c)(1) and Houston v. Lack. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED