UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7000

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GARY LEE TIDD,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. James C. Fox, Senior District Judge. (7:10-cr-00043-F-1; 7:12-cv-00106-F)

Submitted: August 26, 2014 Decided: August 29, 2014

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

Vacated and remanded by unpublished per curiam opinion.

Gary Lee Tidd, Appellant Pro Se. Jennifer P. May-Parker, Assistant United States Attorney, Shailika K. Shah, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

PER CURIAM:

Gary Lee Tidd appeals the district court's order dismissing his 28 U.S.C. § 2255 (2012) motion. We granted a certificate of appealability on the issue of whether Tidd raised a viable claim of ineffective assistance of counsel based on counsel's alleged failure to comply with Tidd's direction and note an appeal. The Government concedes that Tidd's allegations stated a potentially meritorious claim of ineffective assistance and that the district court's dismissal of that claim was premature in the absence of an evidentiary hearing. Roe v. Flores-Ortega, 528 U.S. 470, 477 (2000); United States v. Oliver, 865 F.2d 600, 601 (4th Cir. 1989); see also United States v. Poindexter, 492 F.3d 263, 269 (4th Cir. 2007); United States v. Peak, 992 F.2d 39, 42 (4th Cir. 1993).

Accordingly, we vacate the district court's order dismissing Tidd's § 2255 motion and remand for an evidentiary hearing on whether counsel neglected Tidd's direction to appeal. We dispense with oral argument because the facts and legal conclusions are adequately presented in the materials before this court and argument would not aid in the decisional process.

VACATED AND REMANDED