

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
ANTOIN DEANDRE McDONALD,
Defendant-Appellant.

No. 00-6854

Appeal from the United States District Court
for the Eastern District of Virginia, at Alexandria.
Claude M. Hilton, Chief District Judge.
(CR-99-60-A, CA-99-1984-AM)

Submitted: December 15, 2000

Decided: January 11, 2001

Before MICHAEL, TRAXLER, and KING, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

Antoin Deandre McDonald, Appellant Pro Se. Thomas More Hollenhorst, Assistant United States Attorney, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Antoin Deandre McDonald, a pro se inmate, challenged on numerous grounds, including ineffective assistance of counsel, his guilty plea conviction for possession with intent to distribute cocaine base. *See* 28 U.S.C.A. § 2255 (West Supp. 2000). The Government responded to the § 2255 motion and attached the affidavit of McDonald's former trial counsel. Thereafter, without giving any notice to McDonald, the district court dismissed McDonald's § 2255 motion on the merits.

In his motion to reconsider, filed in the district court, McDonald complained that "before the Petitioner could respond to the U.S. Attorney's motion to dismiss . . . this court dismissed the Petitioner's § 2255 claims . . ." (R. 36 at p. 1). Nonetheless, the district court also denied McDonald's motion to reconsider.

We grant a certificate of appealability and vacate and remand this case to the district court for failure to comply with this court's opinion in *Roseboro v. Garrison*, 528 F.2d 309, 310 (4th Cir. 1975). Before a judgment may be entered against a pro se party, the district court must notify the pro se party, against whom summary judgment may be granted, of his right to file counter-affidavits or other appropriate materials, and give him a reasonable opportunity to do so. *Id.* Here, despite McDonald's notice to the court, in his motion to reconsider, that he was unaware of any duty to respond to the Government's response to his § 2255 motion, the district court failed to provide him with proper notice and time under *Roseboro*. Accordingly, we grant a certificate of appealability and vacate and remand to the district court for proceedings in compliance with this opinion. We expressly decline to rule on the propriety of the district court's grounds for dismissal on the merits of McDonald's claims.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED