

UNPUBLISHED

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

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

JESSE DANIEL ROBARDS,  
*Defendant-Appellant.*

No. 00-7103

Appeal from the United States District Court  
for the Eastern District of North Carolina, at Raleigh.  
Terrence W. Boyle, Chief District Judge.  
(CR-98-94, CA-99-786-5-BO)

Submitted: December 15, 2000

Decided: January 4, 2001

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

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Vacated and remanded by unpublished per curiam opinion.

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**COUNSEL**

Jesse Daniel Robards, Appellant Pro Se. Banumathi Rangarajan,  
Assistant United States Attorney, Raleigh, North Carolina, for Appel-  
lee.

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Unpublished opinions are not binding precedent in this circuit.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

**OPINION**

## PER CURIAM:

Jessie D. Robards appeals from the dismissal of his 28 U.S.C.A. § 2255 (West Supp. 2000) motion, attacking on numerous grounds his conviction for violating 18 U.S.C. § 922(g)(3). For the following reasons, we vacate and remand for further proceedings.

Regarding Robards' claim that his counsel was ineffective for failing to file a notice of appeal following his sentencing, the district found that Robards failed to show prejudice, citing *Hill v. Lockhart*, 474 U.S. 52, 59 (1985), as authority for this position. This finding was erroneous, however, under this court's decision in *United States v. Peak*, 992 F.2d 39, 42 (4th Cir. 1993). In *Peak*, we held that counsel's failure to pursue an appeal requested by a defendant constitutes ineffective assistance of counsel regardless of the likelihood of success on the merits. *Id.* Thus, if counsel promises to note an appeal and then fails to do so, petitioner is entitled to relief in the form of a belated appeal. *Id.*; see also *Roe v. Flores-Ortega*, 528 U.S. 470 (2000).

Accordingly, we grant a certificate of appealability and vacate the district court's order and remand for compliance with this opinion and *Peak*. We decline to address any other claims on appeal. 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