

UNPUBLISHED

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

JOHN MOCK, a/k/a Eric Washington,
Petitioner-Appellant,

v.

STATE OF NORTH CAROLINA,
Respondent-Appellee.

No. 01-8108

Appeal from the United States District Court
for the Eastern District of North Carolina, at Raleigh.
James C. Fox, Senior District Judge.
(CA-01-786-5)

Submitted: March 12, 2002

Decided: September 16, 2002

Before WILKINS, WILLIAMS, and MICHAEL, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

John Mock, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

John Mock seeks to appeal the district court's order denying relief on his petition filed under 28 U.S.C. § 2254 (2000). For the reasons set forth below, we vacate and remand for further proceedings.

The district court, acting sua sponte, determined from the face of Mock's petition that his claims were barred by the one-year limitations period set forth in 28 U.S.C. § 2244(d) (2000), and dismissed the action without giving Mock notice and an opportunity to respond. At the time it issued its decision, the district court did not have the benefit of our recent opinion in *Hill v. Braxton*, 277 F.3d 701 (4th Cir. 2002). *Hill v. Braxton* now requires the district court to provide such notice and opportunity to respond "unless it is indisputably clear from the materials presented to the district court that the petition is untimely and cannot be salvaged by equitable tolling principles or any of the circumstances enumerated in § 2244(d)(1)." *Id.* at 707.

Because it is not "indisputably clear" that Mock cannot salvage his petition, we grant a certificate of appealability, vacate the district court's order, and remand to the district court to provide Mock with the notice and opportunity to respond to which he is now entitled pursuant to *Hill*. 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