

UNPUBLISHED

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

UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i>	}
v.	
COLIN SEALE, <i>Defendant-Appellant.</i>	

No. 01-8119

Appeal from the United States District Court  
for the District of South Carolina, at Florence.  
C. Weston Houck, District Judge.  
(CR-97-663-4, CA-00-918-4)

Submitted: May 9, 2002

Decided: June 18, 2002

Before WILKINS, NIEMEYER, and MOTZ, Circuit Judges.

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Vacated and remanded by unpublished per curiam opinion.

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**COUNSEL**

Colin Seale, Appellant Pro Se. Alfred William Walker Bethea, Assistant United States Attorney, Florence, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

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**OPINION**

## PER CURIAM:

Colin Seale, a pro se inmate, challenged under 28 U.S.C.A. § 2255 (West Supp. 2001) his conviction and sentence for conspiracy to possess with intent to distribute cocaine base. The Government responded to the § 2255 motion and attached the affidavit of Seale's former trial counsel. Thereafter, without giving any notice to Seale, the district court dismissed the § 2255 motion on the merits.

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, the district court failed to provide proper notice to Seale 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 Seale'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