

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

DANIEL E. FELIX,
Petitioner-Appellant,

v.

RONALD ANGELONE, Director,
Virginia Department of Corrections,
Respondent-Appellee.

No. 02-6270

Appeal from the United States District Court
for the Eastern District of Virginia, at Alexandria.
T. S. Ellis, III, District Judge.
(CA-02-46-AM)

Submitted: February 13, 2003

Decided: March 6, 2003

Before WILKINS, Chief Judge, and MOTZ and
GREGORY, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

Daniel E. Felix, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Daniel E. Felix 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 Felix'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 Felix notice or an opportunity to respond. The district court did not have the benefit of our recent decision in *Hill v. Braxton*, 277 F.3d 701 (4th Cir. 2002). After *Hill*, the district court is required 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 Felix cannot salvage his petition, we grant his motion for a certificate of appealability, vacate the district court's order, and remand to the district court to provide Felix with the notice and opportunity to respond to which he is now entitled pursuant to *Hill*. We deny Felix's motion for appointment of counsel and motion to amend petition and for emergency relief. 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