

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-7376

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TREMAINE BERNARD COATS, a/k/a Andre Gray,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Malcolm J. Howard, District Judge. (CR-01-117; CA-02-495-5-H)

Submitted: December 15, 2004

Decided: January 12, 2005

Before MICHAEL, MOTZ, and TRAXLER, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Tremaine Bernard Coats, Appellant Pro Se. Rudolf A. Renfer, Jr., Assistant United States Attorney, Ethan Ainsworth Ontjes, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Tremaine Bernard Coats seeks to appeal the district court's denial of his 28 U.S.C. § 2255 (2000) motion. In his motion, Coats alleged his counsel was ineffective on four grounds: (1) counsel failed to move to suppress the evidence against him; (2) counsel misinformed him as to the elements of the offense, which resulted in Coats' entry of an uninformed guilty plea; (3) counsel failed to request Coats be sentenced for his "minor role" in the crime or that he reap the benefit of the "safety valve;" and (4) counsel failed to file a direct appeal, despite having been requested to do so. By order dated August 5, 2004, we granted a certificate of appealability as to Coats' claim that his attorney was ineffective for failing to file a requested appeal, but denied a certificate of appealability as to his remaining claims. We now vacate in part the district court's order and remand for further proceedings.

In order to succeed on a claim of ineffective assistance of counsel, a defendant must show that his counsel's performance fell below an objective standard of reasonableness and that counsel's deficient performance was prejudicial. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984). Under United States v. Peak, 992 F.2d 39, 42 (4th Cir. 1993), counsel's failure to pursue an appeal requested by a defendant constitutes ineffective assistance, regardless of the likelihood of success on the merits.

Because Coats has presented a genuine issue of material fact with regard to this claim, and his allegation, if true, would entitle him to relief, we vacate the portion of the district court's order denying this claim and remand to the district court for further proceedings consistent with this opinion. By this disposition, we express no view on the ultimate merits of Coats' claim. 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