

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7777

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ALBERT RANDOLPH,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. James R. Spencer, District Judge. (CR-01-304; CA-04-622)

Submitted: March 30, 2005

Decided: May 17, 2005

Before MOTZ, KING, and GREGORY, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Albert Randolph, Appellant Pro Se. Peter Sinclair Duffey, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Albert J. Randolph appeals from the order of the district court dismissing as untimely his motion to vacate, set aside, or correct his sentence filed pursuant to 28 U.S.C. § 2255 (2000). The district court granted a certificate of appealability. Finding that the unique circumstances of this case warrant an application of equitable tolling, we vacate the order of the district court and remand for further proceedings.

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") includes a one-year statute of limitations for § 2255 motions brought by federal prisoners. This limitations period is subject to equitable tolling where a prisoner has been precluded from compliance by circumstances external to his own conduct. See United States v. Prescott, 221 F.3d 686, 688 (4th Cir. 2000). In the instant matter, the district court misplaced Randolph's motion for assistance with the production of his attorney's file, and it failed to discover this oversight until after Randolph's opportunity to file a § 2255 motion had lapsed. Under these circumstances, we conclude that the application of equitable tolling is appropriate.

Accordingly, we vacate the judgment of the district court and remand for further proceedings. 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