

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-7094

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

HERBERT WAKEFIELD, III,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Henry M. Herlong, Jr., District Judge. (CR-96-710)

Submitted: September 29, 2006

Decided: October 31, 2006

Before WILLIAMS, KING, and DUNCAN, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Herbert Wakefield, III, Appellant Pro Se. Isaac Louis Johnson, Jr., OFFICE OF THE UNITED STATES ATTORNEY, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Herbert Wakefield, III, appeals the district court's order denying his motion filed under Fed. R. Crim. P. 41(g), seeking the return of currency that was seized from him during his arrest. Wakefield asserts that he is entitled to the return of the property and he was never notified of any proposed forfeiture of the money. We review the denial of a motion for the return of seized property for abuse of discretion. United States v. Chambers, 192 F.3d 374, 376 (3d Cir. 1999). A district court abuses its discretion if it fails or refuses to exercise its discretion, fails "adequately to take into account judicially recognized factors constraining its exercise" of discretion, or exercises its discretion based upon "erroneous factual or legal premises." James v. Jacobson, 6 F.3d 233, 239 (4th Cir. 1993).

In the present case, the record contains only Wakefield's motion, a notation on the docket sheet of the district court's oral order denying that motion, Wakefield's request for a statement of reasons for the decision, a docket sheet entry of the court's oral order denying that request, and the notice of appeal. The district court's orders do not express the reason for the denial of the motion for return of property. Because we cannot discern a basis for the decision on the sparse record before us, we are unable to determine whether the district court appropriately exercised its discretion. Accordingly, we vacate the district court's order and

remand for further proceedings. We deny Wakefield's motion for appointment of counsel and 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