

Rehearing granted, June 7, 2006

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-7586

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

PATRICK EDWARDS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T. S. Ellis, III, District Judge. (CR-00-136)

Submitted: March 22, 2006

Decided: April 11, 2006

Before WILKINSON, TRAXLER, and MICHAEL, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Patrick Edwards, Appellant Pro Se. James L. Trump, William Edward Fitzpatrick, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Patrick Edwards appeals the district court's order denying his motion for return of administratively forfeited property. The district court determined that the notice provided by the Government was constitutionally adequate. We disagree. No attempt was apparently made to serve Edwards with notice of the forfeiture proceeding either in person or at the location at which he was then-incarcerated by federal authorities, despite the facts that (1) he made an initial court appearance in the Alexandria Division of the Eastern District of Virginia, the district and division in which the forfeiture proceeding was initiated, on the very day notice of the forfeiture proceeding was sent to the Wayne County Jail in Detroit, an attorney's address in Detroit, and a residential address in Chicago; (2) he made a second court appearance in the Alexandria Division of the Eastern District of Virginia the very day notice of the forfeiture proceeding was published in The Wall Street Journal; and (3) he remained in federal custody during the entire period in which the administrative forfeiture action remained pending. Under these circumstances, we conclude that notice was not reasonably calculated to apprise Edwards of the pendency of the action of forfeiture. See United States v. Minor, 228 F.3d 352 (4th Cir. 2000). 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

*Because it was raised for the first time on appeal, we decline to address the Government's argument that notice of the forfeiture was not required because Edwards's plea agreement waived his interest in any assets generated through money laundering.