

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 07-7657**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DEZMEND RASHAWN DOWEARY, a/k/a Hit,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Raymond A. Jackson, District Judge. (2:04-cr-00016-RAJ-1; 2:07-cv-00280-RAJ)

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Submitted: August 27, 2009

Decided: September 4, 2009

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Before TRAXLER, Chief Judge, WILKINSON, Circuit Judge, and HAMILTON, Senior Circuit Judge.

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Vacated and remanded by unpublished per curiam opinion.

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Dezmend Rashawn Doweary, Appellant Pro Se. Darryl James Mitchell, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dezmend Rashawn Doweary appeals the district court's order dismissing as untimely his motion under 28 U.S.C.A. § 2255 (West Supp. 2009). Having previously granted a certificate of appealability, see 28 U.S.C. § 2253(c) (2006), we now conclude that the district court erred in dismissing the motion.

The district court entered its judgment of conviction on November 29, 2004, and Doweary timely appealed. We dismissed the appeal on March 30, 2006. Doweary did not petition for a writ of certiorari in the Supreme Court. Thus, his conviction became final ninety days later on June 28, 2006, see Clay v. United States, 537 U.S. 522, 527 (2003), and he had until June 28, 2007, to file his § 2255 motion. Doweary's § 2255 motion was dated June 13, 2007, and received by the district court on June 21, 2007. The district court ruled that Doweary's conviction became final on November 29, 2004, and his § 2255 motion was time-barred. On appeal, Doweary contends the district court erred in ruling his motion was time-barred. In its responsive brief, the Government concedes that Doweary's § 2255 motion was timely filed, and the district court's order should be reversed.

Accordingly, we vacate the district court's order dismissing Doweary's § 2255 motion as untimely, and we remand the case for reconsideration of the motion. 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