

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-4517

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTHONY BROWN,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T. S. Ellis, III, Senior District Judge. (1:03-cr-00612-TSE-1)

Submitted: February 27, 2015

Decided: May 6, 2015

Before GREGORY, DUNCAN, and FLOYD, Circuit Judges.

Vacated and remanded with instructions by unpublished per curiam opinion.

Joseph J. McCarthy, DELANEY, MCCARTHY & COLTON, P.C., Alexandria, Virginia, for Appellant. Dana J. Boente, United States Attorney, Morris R. Parker, Jr., Assistant United States Attorney, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Anthony Brown appeals from the district court's order denying his motion to rescind his plea agreement and withdraw his guilty plea. We vacate the order and remand with directions to conduct an evidentiary hearing on the motion.

We conclude that the existing record does not permit us to properly perform our appellate review function and signals for an evidentiary hearing so that the district court can make an informed determination upon a properly developed record. We have always declined to create a rigid rule that would override a district court's "common sense and sound discretion" when determining whether an evidentiary hearing must be held. Raines v. United States, 423 F.2d 526, 530 (4th Cir. 1970) (considering a 28 U.S.C. § 2255 (2012) motion challenging the voluntariness of a guilty plea). However, where the circumstances necessitate an evidentiary hearing to fairly resolve the issues presented and provide an adequate record for appellate review, we have required such a hearing. For these reasons, the district court should hold an evidentiary hearing in order to develop an adequate record upon which a fully informed adjudication of Brown's motion can be conducted and a proper appellate review of any judgment may be performed. We express no opinion on the merits of the motion based on the record before us.

Accordingly, the order of the district court is hereby vacated and remanded with direction to conduct an evidentiary hearing on Brown's motion. We deny Brown's motions to expedite the appeal as moot. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

VACATED AND REMANDED
WITH INSTRUCTIONS