

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-6369

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GEORGE WILLIAM WHITMIRE,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Florence. Terry L. Wooten, Chief District Judge. (4:04-cr-00483-TLW-1; 4:15-cv-03406-TLW)

Submitted: September 20, 2016 Decided: September 27, 2016

Before KING and SHEDD, Circuit Judges, and DAVIS, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

George William Whitmire, Appellant Pro Se. Robert Frank Daley, Jr., Assistant United States Attorney, Columbia, South Carolina; Arthur Bradley Parham, Assistant United States Attorney, Florence, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

George William Whitmire seeks to appeal the district court's order dismissing his 28 U.S.C. § 2255 (2012) motion. We have reviewed the record and the district court's opinion and find that the court misapplied the concurrent sentence doctrine because it is not reasonably certain from the record that adverse collateral consequences will not flow from Whitmire's designation as an armed career criminal. See Benton v. Maryland, 395 U.S. 784, 787-91 (1969); United States v. Hill, 859 F.2d 325, 326 (4th Cir. 1988) (discussing doctrine); United States v. Webster, 639 F.2d 174, 182-83 (4th Cir. 1981) (stating that a court must be able to "foresee with reasonable certainty that no adverse collateral consequences will redound to the defendant").

Accordingly, we grant a certificate of appealability, vacate the district court's order, and remand for further proceedings. 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