

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 95-7220

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DENNIS LEE ROSE,

Defendant - Appellant.

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Appeal from the United States District Court for the Western  
District of Virginia, at Roanoke. James C. Turk, District Judge.  
(CR-89-70-B, CA-94-648-R)

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Submitted: December 14, 1995                      Decided: January 17, 1996

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Before ERVIN, Chief Judge, and WIDENER and WILKINS, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Dennis Lee Rose, Appellant Pro Se. Julie Marie Campbell, Assistant  
United States Attorney, Roanoke, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Appellant appeals from the district court's order denying his 28 U.S.C. § 2255 (1988) motion. We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court.\* United States v. Rose, Nos. CR-89-70-B; CA-94-648-R (W.D. Va. May 5, 1995). 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.

AFFIRMED

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\* In denying relief on Appellant's motion, the district court granted Appellee's motion to dismiss filed pursuant to Fed. R. Civ. P. 12(b)(6). Where, as in this case, the district court considered matters outside the pleadings, it should have treated the Rule 12(b)(6) motion as a motion for summary judgment. See Gay v. Wall, 761 F.2d 175, 177 (4th Cir. 1985). Any error was harmless because Appellant received the necessary notice pursuant to Roseboro v. Garrison, 528 F.2d 309, 310 (4th Cir. 1975).