

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

JAMES AARON HAYES,

Plaintiff-Appellant.

v.

No. 95-8514

JOHN GRIMMER, Deputy; JUDY HICKS,

Chief Jail,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of North Carolina, at Raleigh.
Terrence W. Boyle, District Judge.
(CA-94-825-5-CT-BO)

Submitted: October 8, 1996

Decided: December 16, 1996

Before NIEMEYER, HAMILTON, and WILLIAMS,
Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

James Aaron Hayes, Appellant Pro Se. Charles David Morison,
County Attorney, Burgaw, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

James Aaron Hayes, a North Carolina prisoner, appeals from the district court's order adopting the magistrate judge's recommendation to grant Appellees' motion for summary judgment. Although we express no opinion as to the ultimate success of Hayes' claim, we vacate the district court's order and remand for further proceedings.

Hayes noted specific, timely objections to the magistrate judge's report and recommendation that the motion for summary judgment be granted. The district court was required to review the disputed issues de novo. 28 U.S.C. § 636(b)(1) (1994); see *Wimmer v. Cook*, 774 F.2d 68, 76 (4th Cir. 1985); *Orpiano v. Johnson*, 687 F.2d 44, 48 n.1 (4th Cir. 1982). Although the court stated that it reviewed all of the evidence, affidavits, and records in reaching its decision, it appears that the court inadvertently failed to consider Hayes' sworn responses to the motion for summary judgment and magistrate judge's report, both of which contradicted the Appellees' affidavits.

Accordingly, we vacate the judgment and remand for further proceedings. We deny Hayes' motion to appoint counsel and 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