

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 97-7055

KEMBA NIAMBI SMITH,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Virginia, at Norfolk.
Robert G. Doumar, Senior District Judge.
(CR-93-162, CA-97-411-2)

Submitted: August 27, 1998

Decided: September 15, 1998

Before NIEMEYER and HAMILTON, Circuit Judges, and
BUTZNER, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

George Kendall, Leah Song Richardson, NAACP LEGAL DEFENSE
& EDUCATIONAL FUND, New York, New York; Gerald Thomas
Zerkin, GERALD T. ZERKIN & ASSOCIATES, Richmond, Vir-
ginia, for Appellant. Fernando Groene, OFFICE OF THE UNITED
STATES ATTORNEY, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Kemba Niambi Smith appeals from a district court order that concluded her motion filed under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1998) was barred by the one-year limitations period of 28 U.S.C.A. § 2255 (West Supp. 1998). Smith's conviction became final in 1995, and she filed her habeas motion on April 23, 1997. Because Smith had until April 23, 1997 to file her § 2255 motion, see Brown v. Angelone, ___ F.3d ___, 1998 WL 389030 (4th Cir. July 14, 1998) (Nos. 96-7173, 96-7208), her motion was not time barred. For these reasons, we grant a certificate of appealability on this issue, 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 the court and argument would not aid the decisional process.

VACATED AND REMANDED