

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 97-7150

ENRIQUE ALFONSO GAYLE, a/k/a Kiki,

Defendant-Appellant.

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 97-7151

ROBERTO SPALDING, a/k/a Pepito,

a/k/a Pops,

Defendant-Appellant.

Appeals from the United States District Court
for the Eastern District of Virginia, at Norfolk.
J. Calvitt Clarke, Jr., Senior District Judge.
(CR-90-105-N, CA-97-417, CA-97-418)

Submitted: September 29, 1998

Decided: October 19, 1998

Before WILKINS and HAMILTON, Circuit Judges, and
PHILLIPS, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

Enrique Alfonso Gayle, Roberto Spalding, Appellants Pro Se. Laura Marie Everhart, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Enrique Gayle and Roberto Spalding seek to appeal the district court's orders denying relief on their motions filed under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1998). Appellants' convictions became final in 1993. The district court dismissed their § 2255 motions, executed and deposited in the prison mailing system on April 21, 1997, as filed outside the one-year limitation period imposed by § 2255. Pursuant to our recent decision in Brown v. Angelone, 150 F.3d 370, 375 (4th Cir. 1998), Appellants had until April 23, 1997, in which to timely file their motions.

Accordingly, because Appellants filed their motions prior to this date, we grant certificates of appealability, vacate the district court's orders, and remand these cases for consideration on the merits.* See Houston v. Lack, 487 U.S. 266 (1988); Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998) (applying Houston to habeas petitions). 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

*We also grant Appellants' motions for leave to proceed on appeal in forma pauperis.