

UNPUBLISHED

**UNITED STATES COURT OF APPEALS**  
**FOR THE FOURTH CIRCUIT**

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UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

JERRY ALLEN BAILEY,  
*Defendant-Appellant.*

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No. 00-6447

Appeal from the United States District Court  
for the Western District of North Carolina, at Charlotte.  
Graham C. Mullen, Chief District Judge.  
(CR-94-111, CA-99-495-3-MU)

Submitted: September 29, 2000

Decided: October 18, 2000

Before WIDENER, MOTZ, and TRAXLER, Circuit Judges.

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Vacated and remanded by unpublished per curiam opinion.

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**COUNSEL**

Jerry Allen Bailey, Appellant Pro Se. Brian Lee Whisler, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

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**OPINION**

## PER CURIAM:

Jerry Allen Bailey seeks to appeal the district court's order dismissing without prejudice his motion filed under 28 U.S.C.A. § 2255 (West Supp. 2000). We note that Bailey's prior § 2255 motion, filed before he was sentenced, does not trigger the requirement of authorization from this court to file a second or successive 28 U.S.C. § 2255 motion. *See id.*; *See O'Connor v. United States*, 133 F.3d 548, 550 (7th Cir. 1998). Accordingly, we grant a certificate of appealability and vacate the district court's order requiring authorization from this court for Bailey's instant § 2255 motion. The case is remanded for further proceedings not inconsistent with this opinion. 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*

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*VACATED AND REMANDED*