

UNPUBLISHED

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

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

JERRY JEFFERSON SEXTON,  
*Defendant-Appellant.*

No. 02-6273

Appeal from the United States District Court  
for the Western District of Virginia, at Roanoke.  
Samuel G. Wilson, Chief District Judge.  
(CR-97-9, CA-00-578-7)

Submitted: November 5, 2002

Decided: February 28, 2003

Before WILLIAMS and KING, Circuit Judges, and  
HAMILTON, Senior Circuit Judge.

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Dismissed in part and vacated and remanded in part by unpublished  
per curiam opinion.

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**COUNSEL**

Jerry Jefferson Sexton, Appellant Pro Se. Jean Barrett Hudson,  
OFFICE OF THE UNITED STATES ATTORNEY, Charlottesville,  
Virginia, 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Unpublished opinions are not binding precedent in this circuit.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 J. Sexton seeks to appeal the district court's order denying relief on his motion filed under 28 U.S.C. § 2255 (2000). Sexton raised four claims in his original § 2255 motion, two Fourth Amendment claims; one claim related to failure of the prosecution to disclose evidence favorable to the defendant; and one claim related to the denial of the effective assistance of counsel. After filing the § 2255 motion, Sexton filed a pleading regarding allegedly "new evidence" about the credibility of a trial witness, his Fourth Amendment claims, and a list of "Additional Issues Relating Back to Original Proceeding," none of which relied on any of the allegedly new evidence.

The district court, *sua sponte*, determined that Sexton's claims were barred by the one-year limitations period set forth in 28 U.S.C. § 2244(d) (2000), and dismissed the action without giving Sexton notice or an opportunity to respond. It also held that even if the motion was timely, Sexton was not entitled to relief on the merits on the Fourth Amendment claims and the claim regarding allegedly "new evidence" about the credibility of a trial witness. We have reviewed the record and conclude that Sexton has not made a substantial showing of the denial of a constitutional right as to these claims. Accordingly, we deny a certificate of appealability and dismiss the appeal as to the Fourth Amendment claims and the claims regarding allegedly "new evidence" about the credibility of a trial witness.

On the remaining claims, under *Hill v. Braxton*, 277 F.3d 701, 707 (4th Cir. 2002), which was decided after the district court's decision in this case, a district court, before *sua sponte* dismissing a § 2255 motion as untimely, must provide the movant with an opportunity to respond "unless it is indisputably clear from the materials presented to the district court that the petition is untimely and cannot be salvaged by equitable tolling principles or any of the circumstances enu-

merated in [the applicable statute]." Accordingly, as to Sexton's claim related to the failure of the prosecution to disclose evidence favorable to the defendant, his claim of denial of the effective assistance of counsel, and any "Additional Issues" which relate back to these claims, *see United States v. Pittman*, 209 F.3d 314, 317-18 (4th Cir. 2000), we grant a certificate of appealability, vacate the district court's order, and remand to the district court to provide Sexton with the notice and opportunity to respond to which he is now entitled pursuant to *Hill*. We deny Sexton's motions for discovery and general relief and deny his motion to place this case in abeyance. 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.

*DISMISSED IN PART, AND VACATED AND  
REMANDED IN PART*