

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-6523

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

NELSON RAFAEL ZAPATA-VICENTE,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. James R. Spencer, District Judge. (CR-01-61; CA-04-579)

Submitted: September 19, 2005

Decided: October 13, 2005

Before MICHAEL, MOTZ, and GREGORY, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Nelson Rafael Zapata-Vicente, Appellant Pro Se. Stephen Wiley Miller, Angela Mastandrea-Miller, Assistant United States Attorneys, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Nelson Rafael Zapata-Vicente, a federal prisoner, appeals the district court's order construing his letter of February 14, 2005, as a successive 28 U.S.C. § 2255 (2000) motion and dismissing the motion for lack of jurisdiction.

Upon review, we find that Zapata-Vicente's letter is more appropriately construed as a motion seeking relief from the district court's judgment pursuant to Fed. R. Civ. P. 60(b). See Gonzalez v. Crosby, 125 S. Ct. 2641, 2648 (2005); United States v. Winestock, 340 F.3d 200, 207 (4th Cir. 2003). Rather than seeking to file new claims pursuant to § 2255, Zapata-Vicente argued in his letter that he filed his amended § 2255 motion within the time originally allotted to him by the district court.

Accordingly, we vacate the district court's order and remand for the court to consider Zapata-Vicente's letter pursuant to Rule 60(b).^{*} We express no opinion as to whether Zapata-Vicente is entitled to relief under Rule 60(b). We deny Zapata-Vicente's motion for appointment of counsel. 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 note that a certificate of appealability was granted below.