

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 97-6311

KEVIN JEROME FUELL,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Virginia, at Richmond.
Richard L. Williams, Senior District Judge.
(CR-93-138-R, CA-96-1043-R)

Submitted: July 30, 1998

Decided: August 19, 1998

Before WIDENER, LUTTIG, and WILLIAMS, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

Joseph Samuel Massie, III, MORRISSEY, HERSHNER & JACOBS,
Richmond, Virginia, for Appellant. Gurney Wingate Grant, II,
OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Vir-
ginia; David S. Kris, UNITED STATES DEPARTMENT OF JUS-
TICE, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Appellant seeks to appeal the district court's order denying relief on his motion filed under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1998). Appellant's conviction became final in 1994. On December 27, 1996, Appellant filed a § 2255 motion. The district court denied relief because Appellant filed his motion outside the one-year limitation period imposed by § 2255. Pursuant to our recent decision in Brown v. Angelone, ___ F.3d ___, Nos. 96-7173, 96-7208, 1998 WL 389030 (4th Cir. July 14, 1998), Appellant had until April 23, 1997, in which to file a timely motion. Accordingly, because Appellant filed his § 2255 motion before April 23, 1997, we grant a certificate of appealability, vacate the district court's order, and remand this case 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