

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 07-12770  
Non-Argument Calendar

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FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT May 29, 2008 THOMAS K. KAHN CLERK
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D. C. Docket Nos. 06-00168-CV-4  
03-00279-CR-4

JAMIE EDWARD BYRD,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Southern District of Georgia

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**(May 29, 2008)**

Before BIRCH, DUBINA and CARNES, Circuit Judges.

PER CURIAM:

Federal prisoner Jamie Byrd, proceeding pro se, appeals the district court's

denial of his 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence. We issued a certificate of appealability on four issues: (1) whether the district court erred in failing to consider whether Byrd's counsel was ineffective for not challenging his underlying state conviction for theft by taking, which the district court used in calculating his criminal history category for sentencing; (2) whether Byrd sufficiently requested a stay of his § 2255 motion to allow him to complete his challenges to his prior state convictions in state court; (3) if Byrd sufficiently raised the request for a stay, whether the district court impliedly denied it; and (4) if the district court did deny the request for a stay, whether it erred in doing so.

Byrd first contends, and the government concedes, that the district court failed to address the first of these issues. It should have addressed all of the issues, including that one. Therefore, to avoid causing piecemeal litigation, we vacate the denial of Byrd's motion and remand with instructions for the district court to address the issue of whether Byrd's counsel was ineffective for not challenging Byrd's underlying state conviction for theft by taking.

VACATED AND REMANDED.