

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-6552

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KOFIE AKIEM JONES,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Clarksburg. Frederick P. Stamp, Jr., Senior District Judge. (1:03-cr-00047-FPS-RWT-1; 1:13-cv-00267-FPS-RWT)

Submitted: March 7, 2017

Decided: March 17, 2017

Before WILKINSON, NIEMEYER, and SHEDD, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Gray R. Proctor, Orlando, Florida, for Appellant. William Ihlenfeld, II, United States Attorney, Robert H. McWilliams, Jr., Assistant United States Attorney, Wheeling, West Virginia; Leslie R. Caldwell, Assistant Attorney General, Sung-Hee Suh, Deputy Assistant Attorney General, Thomas E. Booth, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kofie Akiem Jones appeals the district court's orders accepting the magistrate judge's recommendation and dismissing his 28 U.S.C. § 2255 (2012) motion as "second or successive" within the meaning of § 2255(h), and denying his Fed. R. Civ. P. 59(e) motion for reconsideration.* Jones argued that his § 2255 motion was not successive pursuant to Magwood v. Patterson, 561 U.S. 320 (2010), because his resentencing constituted a new judgment intervening between his prior § 2255 motions and this one. In dismissing his motion, the district court rejected the argument but granted him a certificate of appealability.

We recently "join[ed] the chorus of our sister circuits in finding that when a habeas petition is the first to challenge a new judgment, it is not second or successive . . . regardless of whether it challenges the sentence or the underlying conviction." In re Gray, No. 16-433, ___ F.3d ___, 2017 WL 775861, at *3 (4th Cir. Feb. 28, 2017). In light of our holding in Gray, we vacate the district court's orders and remand for further proceedings. We dispense with oral argument because the

* In the first order, the district court granted Jones a certificate of appealability as to its dispositive procedural ruling that his § 2255 motion was second or successive within the meaning of § 2255(h). To the extent that it is required, we grant Jones a certificate of appealability as to the district court's subsequent order denying his motion for reconsideration.

facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

VACATED AND REMANDED