

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-11641
Non-Argument Calendar

D.C. Docket Nos. 6:15-cv-00107-LGW-GRS; 6:12-cr-00017-BAE-GRS-1

ASHA K. SPAULDING,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

(January 30, 2018)

Before WILSON, WILLIAM PRYOR and MARTIN, Circuit Judges.

PER CURIAM:

Asha Spaulding appeals *pro se* the *sua sponte* denial of her motion to vacate. *See* 28 U.S.C. § 2255. The district court denied Spaulding’s motion based on her written plea agreement to waive her right to collaterally attack her convictions and sentence in a postconviction proceeding. The Supreme Court instructed in *Day v. McDonough*, 547 U.S. 198 (2006), that “a court must accord the parties fair notice and an opportunity to present their positions” before disposing of a case on a ground not raised in their filings, *id.* at 210. Because the district court denied Spaulding’s postconviction motion without giving her an opportunity to respond to the effect of her waiver, we vacate and remand for the district court to proceed in accordance with the Rules Governing Section 2255 Proceedings.

VACATED AND REMANDED.