UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-6735

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

KURT ALAN STAND, a/k/a Alan David Jackson, a/k/a Junior, a/k/a Ken,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, Chief District Judge. (CR-98-61; CA-02-597-AM)

Submitted: March 14, 2007 Decided: April 13, 2007

Before MOTZ, TRAXLER, and KING, Circuit Judges.

Dismissed in part; vacated and remanded in part by unpublished per curiam opinion.

Leonard I. Weinglass, New York, New York, for Appellant. Ronald Leonard Walutes, Jr., OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kurt Alan Stand appeals the district court's order denying relief on his motion filed pursuant to 28 U.S.C. § 2255 (2000). We previously granted a certificate of appealability on two issues raised before us: whether counsel was ineffective and whether the district court should have considered the declaration of Lothar Ziemer when ruling on the motion.[1] Having considered the materials filed by the parties, we now vacate the district court's order insofar as it relates to the ineffective assistance claim. We remand for an evidentiary hearing on whether defense counsel labored under an actual conflict of interest that adversely affected his performance.[2] See United States v. Nicholson, 475 F.3d 241 (4th Cir. 2007). We leave to the district court to determine what relevance, if any, the Ziemer declaration may have to resolution of this claim.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before

[1]With regard to the other issues raised by Stand in his motion, we previously denied a certificate of appealability, and we now dismiss the appeal as to those issues.

[2]Although Stand raised the conflict of interest claim before the district court, the court's memorandum opinion does not address the claim.

the court and argument would not significantly aid the decisional process.

DISMISSED IN PART;
VACATED AND REMANDED IN PART