

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7718

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JASMINE ROCHELLS ROBESON,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Graham C. Mullen, Chief District Judge. (CR-02-140; CA-04-335-3-2MU)

Submitted: June 21, 2006

Decided: August 11, 2006

Before NIEMEYER, MOTZ, and TRAXLER, Circuit Judges.

Affirmed as modified by unpublished per curiam opinion.

Jasmine Rochells Robeson, Appellant Pro Se. Kimlani S. Murray, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Jasmine Rochells Robeson, a federal prisoner, appealed the district court's order denying relief on her 28 U.S.C. § 2255 (2000) motion. This court previously granted a certificate of appealability and issued a limited remand solely for the purpose of directing the district court to determine whether Robeson's counsel failed to file a notice of appeal from the criminal judgment after being directed to do so. Giving Robeson the benefit of the doubt, the district court granted relief under United States v. Peak, 992 F.2d 39 (4th Cir. 1993), vacated the criminal judgment and reinstated the judgment to afford Robeson the opportunity to file a direct appeal. We note that Robeson's direct appeal currently is pending before this court. Because the remaining claims on which the district court denied § 2255 relief may be raised in the reinstated direct appeal, we grant Robeson's motion for a certificate of appealability, modify the district court's dismissal of Robeson's remaining claims to be without prejudice, and affirm the dismissal as modified.

Robeson's motions for appointment of counsel and for general relief are denied. 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.

AFFIRMED AS MODIFIED