

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 06-6282**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DANETTE LAVAINÉ MAYFIELD,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina, at Statesville. Richard L. Voorhees, District Judge. (5:98-cr-00164-11; 5:01-cv-00083)

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Submitted: November 22, 2006

Decided: December 7, 2006

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Before WILLIAMS and TRAXLER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Vacated and remanded in part; affirmed in part by unpublished per curiam opinion.

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Michael L. Waldman, FRIED, FRANK, HARRIS, SHRIVER & JACOBSON, LLP, Washington, D.C., for Appellant. Robert Jack Higdon, Jr., OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina; Amy Elizabeth Ray, OFFICE OF THE UNITED STATES ATTORNEY, Asheville, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Danette Lavaine Mayfield appeals from the district court's order denying her 28 U.S.C. § 2255 (2000) motion. We previously granted a certificate of appealability on two issues: (1) whether the district court erred in dismissing as time barred Mayfield's claim that her attorney was ineffective for failing to object to criminal history points added for her juvenile convictions and (2) whether trial counsel was ineffective for failing to move for a downward departure on the ground that Mayfield's criminal history category substantially over-represented her criminal record. With regard to the first issue, the Government concedes that the claim was incorrectly dismissed as untimely. Thus, we vacate this portion of the district court's order and remand for consideration of the merits of the claim. Turning to the second issue, after a review of the record and the parties' briefs, we conclude that Mayfield cannot show prejudice from any error by her attorney in failing to move for a downward departure. See Strickland v. Washington, 466 U.S. 668, 687 (1984) (providing standard for establishing ineffective assistance). Thus, we affirm the portion of the district court's order rejecting this claim. We grant the Government's motion to file a supplemental appendix. 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.

VACATED AND REMANDED IN PART;  
AFFIRMED IN PART