

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-7678

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

REGINALD WENDELL BOYD, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. Wallace W. Dixon, Magistrate Judge. (1:05-cr-00159-NCT-2; 1:07-cv-00655-NCT)

Submitted: February 21, 2008

Decided: April 25, 2008

Before MOTZ, SHEDD, and DUNCAN, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Reginald Wendell Boyd, Jr., Appellant Pro Se. Angela Hewlett Miller, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Reginald Wendell Boyd, Jr., seeks to appeal the magistrate judge's dismissal without prejudice of his self-styled "Petition Requesting Sua Sponte," which the magistrate judge construed as a motion pursuant to 28 U.S.C. § 2255 (2000), as well as the magistrate judge's order denying reconsideration. The magistrate judge found that Boyd failed to file his action on the required § 2255 form or furnish the required number of copies, and purported to dismiss the recharacterized motion without prejudice to Boyd filing a properly formatted § 2255 motion. However, the magistrate judge lacked authority to dismiss the case, as neither of the parties had provided the requisite consent to proceed before a magistrate judge. See 28 U.S.C. § 636(c) (2000). In the absence of such consent, the magistrate judge possessed authority only to provide a report to the district court containing proposed findings of fact and recommendations for disposition, but not to make a final determination or enter a judgment. See 28 U.S.C. § 636(b) (1) (B); Davis v. Scott, 176 F.3d 805, 808 (4th Cir. 1999). Accordingly, we vacate the magistrate judge's order and remand for further proceedings.* We dispense with oral argument because the

*We are confident that upon review of this opinion, the district court will also provide Boyd with the proper notice and an opportunity to respond, as required under Castro v. United States, 540 U.S. 375, 377 (2003), before characterizing his filing as a § 2255 motion. See United States v. Blackstock, 513 F.3d 128, 133 (4th Cir. 2008).

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

VACATED AND REMANDED