

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 09-6729**

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LUTHER LEE ROBINSON,

Defendant - Appellant.

---

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. James A. Beaty, Jr., Chief District Judge. (1:06-cr-00119-JAB-1; 1:07-cv-00691-JAB-WWD)

---

Submitted: April 29, 2011

Decided: May 25, 2011

---

Before NIEMEYER, MOTZ, and KING, Circuit Judges.

---

Dismissed in part, vacated in part, and remanded by unpublished per curiam opinion.

---

Luther Lee Robinson, Appellant Pro Se. Graham Tod Green, Assistant United States Attorney, Winston-Salem, North Carolina; Angela Hewlett Miller, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

---

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Luther Lee Robinson seeks to appeal the district court's order denying relief on his 28 U.S.C.A. § 2255 (West Supp. 2010) motion. We dismiss the appeal in part, vacate the district court's order in part, and remand for further proceedings.

We previously granted a certificate of appealability on the issue of whether an evidentiary hearing was necessary in the district court to resolve Robinson's claim that counsel's failure to note an appeal from the criminal judgment amounted to ineffective assistance, deferring consideration of the remainder of Robinson's appeal. Conceding that an evidentiary hearing was necessary, the Government has moved to remand the case to the district court. Without expressing an opinion on the merits of the underlying claim, we vacate the portion of the district court's order denying Robinson's claim that counsel was ineffective for failing to file a notice of appeal from the criminal judgment, grant the Government's motion, and remand for an evidentiary hearing to resolve this issue.

Robinson asserted one other claim in his informal brief; namely, that counsel was ineffective for failing to research, prior to sentencing, appeals pending in the Fourth Circuit that might impact his case. The previously-granted certificate of appealability did not include this issue. We

decline to review the claim because Robinson did not raise it in the district court. See Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993) (stating that issues raised for first time on appeal will not be considered absent a showing of plain error or a fundamental miscarriage of justice).

Accordingly, we vacate the portion of the district court's order denying Robinson's claim that counsel was ineffective for failing to note an appeal, grant the Government's motion to remand, and remand to the district court for an evidentiary hearing to resolve this claim. As to the remaining claim, we deny a certificate of appealability and dismiss in part the appeal. We grant Robinson leave to proceed in forma pauperis and 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.

DISMISSED IN PART,  
VACATED IN PART,  
AND REMANDED