

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6990

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MALCOLM ROLAND ALLEN,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Richard D. Bennett, District Judge. (1:08-cr-00222-RDB-1; 1:11-cv-01143-RDB)

Submitted: November 4, 2013

Decided: November 7, 2013

Before WILKINSON, KEENAN, and WYNN, Circuit Judges.

Affirmed as modified by unpublished per curiam opinion.

Malcolm Roland Allen, Appellant Pro Se. Christopher John Romano, Assistant United States Attorney, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Malcolm Roland Allen, a federal prisoner, seeks to appeal the district court's order denying relief on his 28 U.S.C.A. § 2255 (West Supp. 2013) motion, and denying his 18 U.S.C. § 3582 (2012) motion. The district court granted Allen's claim that his attorney was ineffective for failing to appeal his criminal judgment, vacated the criminal judgment and reinstated the judgment to afford Allen the opportunity to file a direct appeal. The district court nonetheless denied Allen's remaining habeas claims, as well as his § 3582 motion.

Allen's direct appeal is currently pending before this court. Because the remaining claims on which the district court denied § 2255 relief may be raised in Allen's direct appeal, we grant Allen a certificate of appealability as to those claims, modify the district court's dismissal of all of Allen's remaining claims to be without prejudice,* and affirm the dismissal as modified. We dispense with oral argument because the facts and legal contentions are adequately presented in the

* Allen raised essentially the same claim in his habeas motion that he raised in his § 3582 motion. Accordingly, the district court's dismissal of Allen's § 3582 motion should be without prejudice, as well.

materials before this court and argument would not aid the decisional process.

AFFIRMED AS MODIFIED