

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-7787

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHRISTOPHER DAMON SPENCER, a/k/a Dog,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Rebecca Beach Smith, Chief District Judge. (2:11-cr-00030-RBS-FBS-1)

Submitted: September 28, 2015

Decided: October 14, 2015

Before MOTZ, WYNN, and DIAZ, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Christopher Damon Spencer, Appellant Pro Se. Sherrie Scott Capotosto, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Christopher Damon Spencer appeals the denial of his motion for reconsideration pursuant to Fed. R. Civ. P. 59(e), 60(b). This motion raised challenges to Spencer's conviction and sentence as well as to the adjudication of his prior 28 U.S.C. § 2255 (2012) motion. The district court found that Spencer's challenges to the § 2255 proceedings were meritless and that, to the extent Spencer's motion challenged his conviction and sentence, that motion was a successive § 2255 petition that the district court lacked jurisdiction to hear. See United States v. Winestock, 340 F.3d 200, 207 (4th Cir. 2003).

"[W]hen a motion presents claims subject to the requirements for successive applications as well as claims cognizable under Rule 60(b), the district court should afford the applicant an opportunity to elect between deleting the improper claims or having the entire motion treated as a successive application." United States v. McRae, 793 F.3d 392, 400 (4th Cir. 2015) (brackets and internal quotation marks omitted). Because the district court, which did not have the benefit of our decision in McRae, did not afford Spencer such an opportunity here, we vacate its order and remand the case for further proceedings consistent with McRae. We dispense with oral argument because the facts and legal contentions are

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

VACATED AND REMANDED