

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-7350

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DWIGHT LEANDER SOLOMON,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. N. Carlton Tilley, Jr., Senior District Judge. (1:11-cr-00032-NCT-1; 1:13-cv-00365-NCT-LPA)

Submitted: July 20, 2017

Decided: August 2, 2017

Before NIEMEYER and FLOYD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

Dwight Leander Solomon, Appellant Pro Se. Sandra Jane Hairston, Acting United States Attorney, Angela Hewlett Miller, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Dwight Leander Solomon seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2012) motion. On appeal, Solomon challenges only the validity of his sentencing enhancement under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e) (2012).

To assist in our resolution of Solomon's request for a certificate of appealability, *see* 28 U.S.C. § 2253(c)(1)(B) (2012), we directed the Government to file a response addressing the impact, if any, of *Mathis v. United States*, 136 S. Ct. 2243 (2016), on the continuing viability of Solomon's North Carolina breaking and entering conviction as an ACCA predicate violent felony. In response, the Government has moved to remand the case to the district court. The Government concedes that Solomon's ACCA enhancement is no longer valid, regardless of the status of his breaking and entering conviction, because a different predicate offense—a North Carolina conviction for possession with intent to sell cocaine—no longer qualifies as an ACCA predicate under *United States v. Newbold*, 791 F.3d 455, 463-64 (4th Cir. 2015).

In light of the Government's concession and our independent review of the record, we grant a certificate of appealability, vacate the district court's order denying § 2255 relief, and grant the Government's motion to rescind the briefing order and to remand. We remand this case to the district court for further proceedings consistent with this opinion.

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