

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-7560

MIKHAEL DORISE,

Petitioner - Appellant,

v.

WARDEN BRAGG,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Aiken.
Joseph F. Anderson, Jr., Senior District Judge. (1:17-cv-01881-JFA)

Submitted: December 27, 2018

Decided: January 7, 2019

Before WILKINSON, KEENAN, and WYNN, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Mikhael Dorise, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Mikhael Dorise, a federal prisoner, appeals the district court's order accepting the recommendation of the magistrate judge and dismissing without prejudice his 28 U.S.C. § 2241 (2012) petition. The district court rejected Dorise's attempt to challenge his career offender designation through the savings clause of 28 U.S.C. § 2255(e) (2012), because the conduct for which he was convicted had not been decriminalized. *See In re Jones*, 226 F.3d 328, 333-34 (4th Cir. 2000).¹ However, during the pendency of the instant appeal, we announced a new savings clause test pertaining to sentencing claims raised in § 2241 petitions. *United States v. Wheeler*, 886 F.3d 415, 429 (4th Cir. 2018), *petition for cert. filed*, __ U.S.L.W. __ (U.S. Oct. 3, 2018) (No. 18-420). Because the district court did not have the benefit of our decision in *Wheeler*, we grant leave to proceed in forma pauperis, vacate the district court's order, and remand for further proceedings.² We deny the motion to appoint counsel and deny as moot the motion to remove this case from abeyance. 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

¹ Because the district court dismissed Dorise's petition "for . . . reasons unrelated to the contents of the pleadings," we have jurisdiction over this appeal. *Goode v. Cent. Va. Legal Aid Soc'y, Inc.*, 807 F.3d 619, 624 (4th Cir. 2015).

² By this disposition, we express no view on the appropriate application of *Wheeler* to Dorise's petition.