

UNPUBLISHED

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

No. 18-7139

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CARLOS MCCLAMMY, a/k/a Carlos T. McClammy,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, Senior District Judge. (3:14-cr-00004-HEH-DJN-1; 3:15-cv-00277-HEH-DJN)

Submitted: March 16, 2020

Decided: April 16, 2020

Before HARRIS and QUATTLEBAUM, Circuit Judges, and SHEDD, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

Mary K. Martin, MARY K. MARTIN, ATTORNEY AT LAW, Hopewell, Virginia, for Appellant. Aidan Taft Grano, Assistant United States Attorney, Alexandria, Virginia, Erik Sean Siebert, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Carlos McClammy appeals the district court's order denying as futile his motions to amend and denying relief on his 28 U.S.C. § 2255 (2018) motion. We granted a certificate of appealability on the issue of whether, in light of *United States v. Davis*, 139 S. Ct. 2319 (2019), the district court erred in denying the motions to amend by determining that McClammy's challenge to his 18 U.S.C. § 924(c) (2018) conviction in Count 4 was untimely. The Government now elects to waive its timeliness challenge to McClammy's claim but suggests that we can affirm on the alternative ground that amendment would be futile because McClammy's vagueness challenge to Count 4 is procedurally defaulted. McClammy disputes that his claim is futile and contends that remand to the district court is necessary for development of the record.

“[M]indful that we are a court of review, not of first view,” *Lovelace v. Lee*, 472 F.3d 174, 203 (4th Cir. 2006) (internal quotation marks omitted), we vacate the district court's order and remand for further proceedings. We express no opinion on the ultimate resolution of McClammy's *Davis* claims. 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