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#### **Fourth Circuit Court of Appeals**

(Note: You may access the court's opinion by clicking on the case name)

#### **Court Reverses District Court's Dismissal of Petition of Writ of Habeas Corpus and Remands to District Court So It Can Exercise Its Discretion Whether to Hold Evidentiary Hearing on Claim of Ineffective Assistance of Counsel**

[Gordon v. Braxton](#), \_\_\_ F.3d. \_\_\_, 2015 WL 877422 (4th Cir. March 3, 2015). Gordon (petitioner) pled no contest in a Virginia state court to sex-related offenses and was sentenced to prison. He was represented by counsel at the plea and sentencing hearings. Gordon did not timely file a direct appeal. He later filed a pro se habeas petition in state court alleging ineffective assistance of counsel, which was dismissed without an evidentiary hearing. The Virginia Supreme Court denied Gordon's petition for appeal. Gordon then filed a pro se habeas corpus petition in federal district court, which was dismissed based on the state court's reasoning when it dismissed the state petition. Based on Gordon's allegations that his counsel was ineffective for failing to file a notice of appeal when instructed to do so and for not consulting with him about an appeal (see the court's opinion for a recitation of the various state and federal court proceedings), the court held: (1) Gordon properly exhausted his state remedies; (2) the state court did not adjudicate Gordon's claim on the merits; (3) the federal district court consequently owed no deference to the state court's denial of Gordon's petition; and (4) the federal district court applied the wrong standard in deciding that it had no discretion to grant an evidentiary hearing. The court reversed the federal district court's dismissal of the petition and remanded the case to district court so it can exercise its discretion whether to hold an evidentiary hearing on the claim of ineffective assistance of counsel.