

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10778

Non-Argument Calendar

HECTOR ALVAREZ,

Petitioner-Appellant,

versus

HAMILTON WR WARDEN,
ATTORNEY GENERAL, STATE OF ALABAMA,

Respondents-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 1:22-cv-00117-LCB-HNJ

Before ROSENBAUM, GRANT, and BRASHER, Circuit Judges.

PER CURIAM:

This appeal is DISMISSED, *sua sponte*, for lack of jurisdiction. Hector Alvarez appeals from the magistrate judge's January 10, 2023, report and recommendation ("R&R") recommending that his petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, be dismissed. Because the R&R had not been rendered final by the district court at the time of the filing of the notice of appeal, it was not directly appealable. *See United States v. Schultz*, 565 F.3d 1353, 1359 (11th Cir. 2009) (noting that we lack jurisdiction to hear appeals directly from magistrate judges); *McNab v. J & J Marine, Inc.*, 240 F.3d 1326, 1327-28 (11th Cir. 2001) (explaining that, absent consent to adjudication by a magistrate judge, decisions by a magistrate judge pursuant to 28 U.S.C. § 636(b) are not final orders and may not be appealed until rendered final by a district court); *see also* Fed. R. App. P. 4(c)(1); *Jeffries v. United States*, 748 F.3d 1310, 1314 (11th Cir. 2014). Furthermore, the district court's subsequent adoption of the magistrate judge's R&R did not cure the premature notice of appeal. *See Perez-Priego v. Alachua Cnty. Clerk of Ct.*, 148 F.3d 1272, 1273 (11th Cir. 1998) (noting that the court's subsequent adoption of a magistrate judge's report and recommendation does not cure the premature notice of appeal); *Bogle v. Orange Cnty. Bd. of Cnty. Comm'rs*, 162 F.3d 653, 661 (11th Cir. 1998) (explaining that a notice of appeal must designate an already existing judgment or order, not one that is merely expected to be entered).

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All pending motions are DENIED as moot. No petition for rehearing may be filed unless it complies with the timing and other requirements of 11th Cir. R. 40-3 and all other applicable rules.