

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-6598

DAVID CARR,

Petitioner - Appellant,

versus

WILLIAM S. HAINES, Warden, Huttonsville
Correctional Center,

Respondent - Appellee.

Appeal from the United States District Court for the Southern
District of West Virginia, at Charleston. Joseph Robert Goodwin,
District Judge. (CA-01-1257)

Submitted: June 30, 2006

Decided: August 2, 2006

Before NIEMEYER, TRAXLER, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

David Carr, Appellant Pro Se. Dawn Ellen Warfield, OFFICE OF THE
ATTORNEY GENERAL OF WEST VIRGINIA, Charleston, West Virginia, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

David Carr seeks to appeal the district court's orders denying relief on his 28 U.S.C. § 2254 (2000) petition. The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (2000). The magistrate judge recommended that relief be denied in part and recommended holding an evidentiary hearing on several claims. The magistrate judge advised Carr that failure to file timely objections to this recommendation could waive appellate review of a district court order based upon the recommendation. Despite this warning, Carr failed to timely object to the magistrate judge's recommendation.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985); see also Thomas v. Arn, 474 U.S. 140 (1985). Carr has waived appellate review by failing to timely file specific objections after receiving proper notice.

After the magistrate judge held the evidentiary hearing on the remaining claims, she submitted proposed findings and recommendation to the district court to dismiss the remaining claims. After Carr filed timely objections to this second magistrate judge's report, the district court conducted a de novo review of the evidentiary hearing claims. The court accepted the

recommendation of the magistrate judge, denied the 28 U.S.C. § 2254 petition, and dismissed the case.

The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that any assessment of the constitutional claims by the district court is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). We have independently reviewed the record and conclude that Carr has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED