

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-7764

JAMES B. CURRY,

Plaintiff – Appellant,

v.

UNITED STATES SUPREME COURT; SCOTT S. HARRIS, Clerk of Court for
Supreme Court of the United States,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Aiken.
Joseph F. Anderson, Jr., Senior District Judge. (1:16-cv-02733-JFA)

Submitted: April 25, 2017

Decided: May 3, 2017

Before GREGORY, Chief Judge, and WILKINSON and KEENAN, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

James B. Curry, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James B. Curry appeals the district court's order accepting the recommendation of the magistrate judge and dismissing his complaint filed pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). In its order, the district court stated that Curry had filed no objections to the report and recommendation despite having been warned of the consequences of failing to object. On appeal, Curry claims that he did not receive the report and recommendation, and he provides documentary support for his claim.

A party who fails to object in writing to a magistrate judge's proposed findings of fact and conclusions of law is not entitled to de novo review of the magistrate judge's determinations and is barred from contesting those determinations on appeal. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985). The waiver is a result of procedural default and does not affect jurisdiction. *Thomas v. Arn*, 474 U.S. 140, 154 (1985). When a litigant is proceeding pro se, he must be given fair notice of the consequences of failing to object before a procedural default will apply. *Wright*, 766 F.2d at 845-46.

From the record presented, we cannot conclusively determine whether Curry received a copy of the report and recommendation. Accordingly, we vacate the decision of the district court and remand for the district court to make this determination in the first instance. Should the district court find Curry's claim to be credible, it should provide him with a copy of the report and recommendation and afford him an opportunity to object. If, however, the court finds that Curry did receive the report and recommendation, it may reenter its original order, with any necessary modifications.

We deny Curry's motions for default judgment and to "expedite service." 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