UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-7469

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TROY J. GREEN,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. W. Craig Broadwater, District Judge. (CR-02-26; CA-03-73-3)

Submitted: August 30, 2006 Decided: September 14, 2006

Before WILLIAMS, MOTZ, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Troy J. Green, Appellant Pro Se. Thomas Oliver Mucklow, Assistant United States Attorney, Martinsburg, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Troy J. Green seeks to appeal the district court's May 4, 2005 order adopting the report and recommendation of the magistrate judge to deny relief on his 28 U.S.C. § 2255 (2000) motion. Within ten days of that order, Green moved for reconsideration of the order based on not having received the magistrate judge's report and recommendation. The district court granted Green's motion, giving him additional time to file his objections and noting that the court would issue a new order as to the report and recommendation upon its receipt and consideration of Green's objections. Although Green filed his objections, the district court has not yet issued a final order in Green's § 2255 action taking his objections to the magistrate judge's report and recommendation into account.

This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2000), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2000); Fed. R. Civ. P. 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949). Although Green's notice of appeal became effective when the district court ruled on his motion for reconsideration, see Fed. R. App. P. 4(a)(4)(B)(I), because the court granted the motion, the order Green seeks to appeal is neither a final order nor an appealable interlocutory or collateral order.

Accordingly, we deny Green's motion for appointment of counsel and dismiss the appeal for lack of jurisdiction. 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