Smyre v. Johnson Doc. 920060831

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6727

LEROY JEROME SMYRE,

Petitioner - Appellant,

versus

GENE M. JOHNSON, Director of the Virginia Department of Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Walter D. Kelley, Jr., District Judge. (2:05-cv-00426-WDK)

Submitted: August 24, 2006 Decided: August 31, 2006

Before KING, SHEDD, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Leroy Jerome Smyre, Appellant Pro Se. Robert H. Anderson, III, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

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PER CURIAM:

Leroy Jerome Smyre seeks to appeal the district court's order 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 and advised Smyre 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, Smyre failed to object to the magistrate judge's recommendation that the district court dismiss Smyre's petition as barred by the statute of limitations.

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). Smyre has waived appellate review of the district court's adoption of the magistrate judge's timeliness determination because, despite receiving proper notice, Smyre failed to file specific objections to the magistrate judge's finding that his petition was time-barred. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, 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