Willie Johnson v. Leroy Cartledge Doc. 920080922

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6715

WILLIE E. JOHNSON,

Petitioner - Appellant,

v.

LEROY CARTLEDGE, Acting Warden of McCormick Correctional Institution,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Patrick Michael Duffy, District Judge. (6:07-cv-01505-PMD)

Submitted: September 16, 2008 Decided: September 22, 2008

Before MOTZ, TRAXLER, and SHEDD, Circuit Judges.

Dismissed in part; affirmed in part by unpublished per curiam opinion.

Willie E. Johnson, Appellant Pro Se. Donald John Zelenka, Deputy Assistant Attorney General, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

Dockets.Justia.com

PER CURIAM:

Willie E. Johnson 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 Johnson 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, Johnson failed to 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). Johnson has waived appellate review by failing to timely file specific objections after receiving proper notice. Accordingly, we deny a certificate of appealability and dismiss the underlying appeal.

Johnson also appeals the district court's order denying his Fed. R. Civ. P. 59(e) motion. We find no abuse of the district court's discretion in its denial of Johnson's Rule 59(e) motion, and therefore affirm. See Temkin v. Frederick County Comm'rs, 945 F.2d 716, 724 (4th Cir. 1991).

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 IN PART;
AFFIRMED IN PART