

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-8262

ROBERT DALE SMART, a/k/a Robert Smart, a/k/a Robert D. Smart,

Petitioner - Appellant,

v.

CECILIA REYNOLDS, Warden Kershaw Correctional Institution,

Respondent - Appellee.

No. 10-6227

ROBERT DALE SMART, a/k/a Robert Smart, a/k/a Robert D. Smart,

Petitioner - Appellant,

v.

CECILIA REYNOLDS, Warden Kershaw Correctional Institution,

Respondent - Appellee.

Appeals from the United States District Court for the District of South Carolina, at Anderson. G. Ross Anderson, Jr., Senior District Judge. (8:08-cv-03918-GRA)

Submitted: August 26, 2010

Decided: August 31, 2010

Before KING and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Robert Dale Smart, Appellant Pro Se. Donald John Zelenka, Deputy Assistant Attorney General; Alphonso Simon, Jr., OFFICE OF THE ATTORNEY GENERAL OF SOUTH CAROLINA, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In these consolidated appeals, Robert Dale Smart seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 (2006) petition and the court's order denying reconsideration. The district court referred Smart's § 2254 petition to a magistrate judge pursuant to 28 U.S.C.A. § 636(b)(1)(B) (West 2006 & Supp. 2010). The magistrate judge recommended that relief be denied and advised Smart that failure to file timely and specific objections to this recommendation could waive appellate review of a district court order based upon the 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). Smart has waived appellate review of the claims raised in his § 2254 petition by failing to file timely and specific objections after receiving proper notice.

Turning to Smart's appeal of the district court's order denying reconsideration, the order is not appealable unless a circuit justice of judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006); Reid v. Angelone,

369 F.3d 363, 369 (4th Cir. 2004). 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) (2006); Slack v. McDaniel, 529 U.S. 473, 484-85 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003). We have independently reviewed the record and conclude that Smart has not made the requisite showing.

Accordingly, we deny Smart's pending motions, deny a certificate of appealability, and dismiss the appeals. 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