

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-7082

LARRY GORDON KIRBY,

Petitioner - Appellant,

v.

WARDEN, Perry Correctional Institution,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Henry M. Herlong, Jr., Senior District Judge. (3:09-cv-02425-HMH)

Submitted: September 30, 2010

Decided: October 12, 2010

Before NIEMEYER, AGEE, and KEENAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Larry Gordon Kirby, Appellant Pro Se. Roy F. Laney, Heath McAlvin Stewart, III, RILEY, POPE & LANEY, LLC, Columbia, South Carolina; Donald John Zelenka, Deputy Assistant Attorney General, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Larry G. Kirby seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 (2006) petition. The district court referred this case 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 Kirby that failure to file specific objections to this recommendation could waive appellate review of a district court order based upon the recommendation.

The 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). Kirby has waived appellate review by failing to file specific objections after receiving proper notice. Accordingly, we deny a certificate of appealability 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