

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-6812

JAMES A. BUTLER,

Plaintiff - Appellant,

v.

JOHN DOES; JANE DOES, and all AW's; UNITED STATES OF
AMERICA,

Defendants - Appellees,

and

MOUBARAK, Clinical Director; S. DEWALT, Warden; NURSE
WILLIAMS; ELAYAN, Health Service Administrator; BLOCKER,
MD; SERRANO, Clinical director sued in their individual and
official capacity,

Defendants.

Appeal from the United States District Court for the District of
South Carolina, at Beaufort. J. Michelle Childs, District
Judge. (9:08-cv-02760-JMC)

Submitted: November 8, 2011

Decided: December 6, 2011

Before NIEMEYER, DAVIS, and KEENAN, Circuit Judges.

Affirmed as modified by unpublished per curiam opinion.

James A. Butler, Appellant Pro Se. Barbara Murcier Bowens,
Assistant United States Attorney, Columbia, South Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James A. Butler appeals the district court's order adopting the report and recommendation of the magistrate judge and denying relief on Butler's complaint which raised claims under the Federal Tort Claims Act ("FTCA"), finding that Butler failed to object to the magistrate judge's report. Butler also appeals from the denial of his Fed. R. Civ. P. 59(e) motion for reconsideration, which asserted that he had timely filed objections to the magistrate judge's report. In that order, the court found that, although Butler timely filed objections, they were not specific enough to warrant further review.

Initially, the district court referred this case to a magistrate judge pursuant to 28 U.S.C.A. § 636(b)(1)(B) (West 2006 & Supp. 2011). The magistrate judge recommended that relief be denied on Butler's FTCA claims¹ and advised Butler that failure to file timely objections to this recommendation, which specifically identified the portions of the Report and Recommendation to which objections were made, could waive appellate review of a district court order based upon the recommendation.

¹ The district court had earlier dismissed Butler's Bivens v. Six Unknown Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), claims for failure to exhaust, and Butler does not challenge this dismissal on appeal.

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). We find that Butler has waived appellate review by failing to file specific objections after receiving proper notice.² Accordingly, we modify the denial of Rule 59 relief to show that the motion is denied because Butler failed to file timely objections, and we affirm the district court's orders as modified. 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.

AFFIRMED AS MODIFIED

² Although the district court and the parties concluded on reconsideration that Butler had filed timely objections, they were mistaken. The document considered as "objections" was instead an opposition to summary judgment, signed and served prior to the issuance of the magistrate judge's report.