

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 12-7082**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

NORMAN ALAN KERR,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. N. Carlton Tilley, Jr., Senior District Judge. (1:09-cr-00290-NCT-1; 1:11-cv-00382-NCT-JEP)

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Submitted: October 16, 2012

Decided: October 23, 2012

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Before AGEE, DAVIS, and DIAZ, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Norman Alan Kerr, Appellant Pro Se. Robert Albert Jamison Lang, Angela Hewlett Miller, Assistant United States Attorneys, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Norman Alan Kerr seeks to appeal the district court's order dismissing his 28 U.S.C.A. § 2255 (West Supp. 2012) motion without prejudice to his right to refile the motion on the proper forms following the conclusion of his direct appeal.\* The district court referred this case to a magistrate judge pursuant to 28 U.S.C.A. § 636(b)(1)(B) (West 2006 & Supp. 2012). The magistrate judge recommended that the motion be dismissed and advised Kerr that the 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. Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315-16 (4th Cir. 2005); Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985). Kerr has waived appellate

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\* The district court clerk treated Kerr's notice of appeal as seeking to appeal the district court's March 23, 2012 order adopting the magistrate judge's recommendation to dismiss Kerr's § 2255 motion. To the extent Kerr seeks in the present appeal to challenge the district court's rulings at resentencing in May 2012, his arguments are more properly raised in the pending direct appeal of the district court's amended judgment. That appeal has been assigned case No. 12-4775.

review of the district court's order by failing to file objections to the magistrate judge's recommendation after receiving proper notice. Accordingly, we deny a certificate of appealability, deny Kerr's motion to appoint counsel, 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