

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-6855

JOSHUA PATERNOSTER-COZART,

Petitioner - Appellant,

v.

JIM O’SULLIVAN, Acting Superintendent, Hampton Roads Regional Jail;
HAMPTON ROADS REGIONAL JAIL,

Respondents - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at
Norfolk. Mark S. Davis, District Judge. (2:17-cv-00148-MSD-LRL)

Submitted: November 30, 2017

Decided: December 11, 2017

Before WILKINSON, MOTZ, and DUNCAN, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Joshua Paternoster-Cozart, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Joshua Paternoster-Cozart seeks to appeal the district court's order dismissing his 28 U.S.C. § 2254 (2012) petition for failure to exhaust state remedies. The final page of the court's dismissal order indicated that the disposition was recommended by a magistrate judge, yet no report or recommendation was separately filed on the docket. All parties must be served with and given an opportunity to object to the findings and recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1)(C) (2012). Here, the record establishes that Paternoster-Cozart did not receive notice of the magistrate judge's recommendation until the district court issued its dismissal order, thus depriving Paternoster-Cozart of his right to file objections.

Accordingly, we vacate the district court's order and remand with instructions to serve the magistrate judge's recommendation on Paternoster-Cozart and to provide him with an opportunity to file objections. We deny Paternoster-Cozart's motion for a temporary restraining order and for a stay of execution of his sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

VACATED AND REMANDED