

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 11-2150

Phasung Lu Baccam,	*	
	*	
Appellant,	*	
	*	Appeal from the United States
v.	*	District Court for the
	*	Western District of Arkansas.
Sheriff Keith Ferguson, Benton County,	*	
Arkansas,	*	[UNPUBLISHED]
	*	
Appellee.	*	

Submitted: September 1, 2011
Filed: September 7, 2011

Before WOLLMAN, SMITH, and GRUENDER, Circuit Judges.

PER CURIAM.

Phasung Baccam appeals from the magistrate judge's¹ order denying his request for appointed counsel in his 42 U.S.C. § 1983 action. Because the parties did not consent to the jurisdiction of the magistrate judge, *cf.* 28 U.S.C. § 636(c) (upon consent of parties, magistrate may conduct any or all proceedings in civil matter and order entry of judgment in the case); *Gleason v. Sec'y of Health & Human Servs.*, 777 F.2d 1324, 1324 (8th Cir. 1985) (magistrate's decision is final and directly appealable

¹The Honorable Erin Setser, United States Magistrate Judge for the Western District of Arkansas.

if issued under authority of § 636(c); § 636(c) requires clear and unambiguous statement in record of both parties' consent to magistrate's jurisdiction), Baccam is required to seek review of the order in the district court before this court has jurisdiction over an appeal. See Fed. R. Civ. P. 72 (party may within 10 days serve and file with district court written objections to nondispositive and dispositive matters decided by magistrate; if objection to nondispositive order is not timely made, party may not thereafter assign as error defect in magistrate's order); LeGear v. Thalacker, 46 F.3d 36, 36-37 (8th Cir. 1995) (per curiam) (magistrate's decision issued absent consent requires initial review by district court; dismissing for lack of jurisdiction appeal of magistrate's denial of motion to reopen); see also United States v. Gonzalez-Ramirez, 350 F.3d 731, 733 (8th Cir. 2003) (expressing "concerns" that plaintiff's inaction in district court resulted in waiver of right to appeal magistrate's nondispositive order denying motion pursuant to Rule 72(a)).

Accordingly, this appeal is dismissed for lack of jurisdiction.
