

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-7269

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

WILLIAM JOHN IRBY,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. William L. Osteen, District Judge. (CR-97-215, CA-99-1023-1)

Submitted: November 9, 2000

Decided: November 15, 2000

Before WILKINS, WILLIAMS, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

William John Irby, Appellant Pro Se. Timika Shafeek, Assistant United States Attorney, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

William John Irby appeals the district court's order denying his motion filed under 28 U.S.C.A. § 2255 (West Supp. 2000). Irby's case was referred to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (1994). The magistrate judge recommended denying Irby's § 2255 motion and dismissing the action. Along with the magistrate judge's report and recommendation, Irby received notice of the ten day objection period and that failure to file specific objections to the recommendation could preclude appellate review. Despite this warning, Irby failed to file any objections.

The timely filing of objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation. See Wells v. Shriners Hosp., 109 F.3d 198, 201 (4th Cir. 1997). See generally Thomas v. Arn, 474 U.S. 140 (1985). Irby waived appellate review by failing to file objections to the magistrate's recommendation. 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