

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

KEVIN L. CHOICE,
Petitioner-Appellant,

v.

STATE OF SOUTH CAROLINA; CHARLES
CONDON,

Respondents-Appellees.

No. 00-7298

Appeal from the United States District Court
for the District of South Carolina, at Rock Hill.
David C. Norton, District Judge.
(CA-00-2496-0-18BD)

Submitted: January 31, 2001

Decided: March 26, 2001

Before WILKINS, WILLIAMS, and MOTZ, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

Kevin L. Choice, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.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

OPINION

PER CURIAM:

Kevin L. Choice appeals from the district court's order dismissing his petition filed under 28 U.S.C.A. § 2254 (West 1994 & Supp. 2000), without prejudice. Because the district court mistakenly concluded that Choice had failed to file objections, it accepted the recommendation of the magistrate judge without further review and dismissed the petition. Although we express no opinion as to the ultimate success of Choice's claims, we vacate the district court's order and remand for further proceedings.

Choice noted specific and timely* objections to the magistrate judge's report and recommendation that the petition be dismissed. The district court was required to review the disputed issues de novo. 28 U.S.C. § 636(b)(1) (1994). Reliance upon the magistrate judge's summary of the record is insufficient in this regard. Thus, the district court was required to review the disputed portions of the record in the case. *See id.*; *Orpiano v. Johnson*, 687 F.2d 44, 47-48 (4th Cir. 1982).

Because the district court's order does not indicate whether a de novo review was, in fact, conducted, we grant a certificate of appealability, vacate the decision below, and remand for the district court to conduct a de novo review of the disputed portions of the record. 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.

VACATED AND REMANDED

**Houston v. Lack*, 487 U.S. 266 (1988).