

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-7404

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

CARL TATE, a/k/a Carl V. Tate,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at Clarksburg. Frederick P. Stamp, Jr., District Judge. (CR-92-5, CA-97-67-1, CR-92-180, CA-97-73-1)

Submitted: March 30, 2001

Decided: April 24, 2001

Before WILKINS, NIEMEYER, and LUTTIG, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Carl Tate, Appellant Pro Se. Thomas Oliver Mucklow, Assistant United States Attorney, Martinsburg, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Carl V. Tate appeals the district court's order denying his 28 U.S.C.A. § 2255 (West Supp. 2000) motion. Tate's motion was referred to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (1994). The magistrate judge recommended that relief be denied and advised Tate that failure to file timely objections to this recommendation could waive appellate review of a district court order based upon the recommendation.

The timely filing of 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 that failure to object will waive appellate review. See Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985); see also Thomas v. Arn, 474 U.S. 140 (1985). Although Tate filed objections to the magistrate judge's report and recommendation, he failed to object to several of the issues he now raises on appeal. Accordingly, we find that he has waived appellate review of these claims.

As to those claims where Tate did file a proper objection, we have reviewed the record and the district court's opinion accepting the magistrate judge's recommendation and find no reversible error. Accordingly, as to those claims we deny a certificate of appealability and dismiss on the reasoning of the district court. United States v. Tate, Nos. CR-92-5; CA-97-67-1; CR-92-180; CA-97-73-1 (N.D.W. Va. June 27, 2000). 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