

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

No. 06-6785

---

DAVID DWIGHT SMITH,

Petitioner - Appellant,

versus

COLLIE RUSHTON, Warden; HENRY MCMASTER,  
Attorney General,

Respondents - Appellees.

---

Appeal from the United States District Court for the District of  
South Carolina, at Greenville. G. Ross Anderson, Jr., District  
Judge. (6:06-cv-00338-GRA)

---

Submitted: September 26, 2006

Decided: October 2, 2006

---

Before WIDENER and WILKINSON, Circuit Judges, and HAMILTON, Senior  
Circuit Judge.

---

Dismissed by unpublished per curiam opinion.

---

David Dwight Smith, Appellant Pro Se.

---

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

David Dwight Smith seeks to appeal the district court's order adopting the recommendation of the magistrate judge and dismissing his 28 U.S.C. § 2254 (2000) petition without prejudice. The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (2000). The magistrate judge recommended that relief be denied and advised Smith that failure to file timely and specific objections to this recommendation could waive appellate review of a district court order based upon the recommendation. Despite this warning, Smith's objections to the magistrate judge's recommendation were non-specific.

The timely filing of specific 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 of the consequences of noncompliance. Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985); see also Thomas v. Arn, 474 U.S. 140 (1985). Smith has waived appellate review by failing to timely file specific objections after receiving proper notice. Accordingly, we deny a certificate of appealability and Smith's motion for appointment of counsel, 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