

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7244

JOHN H. DARBY,

Petitioner - Appellant,

v.

STATE OF SOUTH CAROLINA; WARDEN, BROAD RIVER CORRECTIONAL
INSTITUTION,

Respondents - Appellees.

Appeal from the United States District Court for the District of
South Carolina, at Columbia. Cameron McGowan Currie, District
Judge. (3:08-cv-02931-CMC)

Submitted: November 24, 2009

Decided: December 11, 2009

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

Dismissed by unpublished per curiam opinion.

John H. Darby, Appellant Pro Se. Donald John Zelenka, Deputy
Assistant Attorney General, Columbia, South Carolina, for
Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

John H. Darby seeks to appeal the district court's orders denying relief on his 28 U.S.C. § 2254 (2006) petition for a writ of habeas corpus. The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (2006). The magistrate judge recommended that relief be denied and advised Darby that failure to file timely objections to this recommendation could waive appellate review of a district court order based on the recommendation. Despite this warning, Darby failed to file timely objections to the magistrate judge's recommendation. The district court accepted the magistrate judge's recommendation and dismissed the petition.

On the same day as the district court's dismissal order, Darby filed objections to the magistrate judge's report.* The objections were received by the district court two days later and, in a second order, the district court considered Darby's untimely objections, found them to be without merit, and affirmed its previous denial of § 2254 relief. Darby timely appealed both orders.

The timely filing of specific objections to a magistrate judge's recommendation is necessary to preserve

* We deem Darby's objections filed on the date he delivered them to prison officials for mailing. See Houston v. Lack, 487 U.S. 266, 270-72 (1988).

appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance. See Wells v. Shriners Hosp., 109 F.3d 198, 201 (4th Cir. 1997); Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985). The district court was under no obligation to consider Darby's objections because they were untimely. Moreover, the fact that the district court ultimately considered the untimely objections does not excuse the applicability of the waiver rule. See Wells, 109 F.3d at 201 ("The law in this circuit is clear. If written objections to a magistrate judge's recommendations are not filed with the district court within ten days, a party waives its right to an appeal."). By failing to file timely objections after receiving proper notice, Darby has waived appellate review of both of the district court's orders.

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