

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 98-7456**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

RONALD EMANUEL HANBERRY,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Durham. William L. Osteen, Sr., District Judge. (CR-94-185, CA-97-1165-1)

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Submitted: December 17, 1998

Decided: January 11, 1999

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Before WILKINS, NIEMEYER, and TRAXLER, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Ronald Emanuel Hanberry, Appellant Pro Se. David Bernard Smith, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Appellant Ronald Hanberry appeals the district court's order denying his motion filed under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1998). Appellant's case 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 Appellant that the failure to file timely objections to this recommendation could waive appellate review of a district court order based upon the recommendation. Despite this warning, Appellant failed to timely object to the magistrate judge's 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); United States v. Schronce, 727 F.2d 91, 93-94 (4th Cir.), cert. denied, 467 U.S. 1208 (1984); see also Thomas v. Arn, 474 U.S. 140 (1985). Appellant has waived appellate review by failing to file timely objections after receiving proper notice. We accordingly deny Appellant's motion for 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