

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 99-6405**

---

SHELBY L. COUNTS,

Petitioner - Appellant,

versus

RONALD J. ANGELONE, Director of the Virginia  
Department of Corrections,

Respondent - Appellee.

---

Appeal from the United States District Court for the Eastern Dis-  
trict of Virginia, at Norfolk. J. Calvitt Clarke, Jr., Senior Dis-  
trict Judge. (CA-98-336-2)

---

Submitted: September 30, 1999

Decided: October 6, 1999

---

Before NIEMEYER, WILLIAMS, and MICHAEL, Circuit Judges.

---

Dismissed by unpublished per curiam opinion.

---

Shelby L. Counts, Appellant Pro Se. Linwood Theodore Wells, Jr.,  
Assistant Attorney General, Richmond, Virginia, for Appellee.

---

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Shelby L. Counts appeals the district court's order dismissing his petition filed under 28 U.S.C.A. § 2254 (West 1994 & Supp. 1999). Counts' 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 Counts that failure to file timely objections to this recommendation could waive appellate review of a district court order based upon the recommendation. Despite this warning, Counts failed to 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); see also Thomas v. Arn, 474 U.S. 140 (1985). Counts has waived appellate review by failing to file objections after receiving proper notice. Accordingly, we deny a certificate of appealability and dismiss the appeal. We deny Counts' motion to proceed in forma pauperis and 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