

Filed: January 10, 2000

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

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No. 99-6905  
(CR-97-135, CA-99-493-1)

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United States of America,

Plaintiff - Appellee,

versus

Densel Recardo Edwards,

Defendant - Appellant.

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O R D E R

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The court amends its opinion filed November 12, 1999, as follows:

On the cover sheet, section 6 -- the disposition is corrected to read "Dismissed and remanded by unpublished per curiam opinion."

For the Court - By Direction

/s/ Patricia S. Connor  
Clerk

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 99-6905

DENSEL RECARDO EDWARDS,

Defendant-Appellant.

Appeal from the United States District Court  
for the Middle District of North Carolina, at Greensboro.  
Russell A. Eliason, Magistrate Judge.  
(CR-97-135, CA-99-493-1)

Submitted: October 29, 1999

Decided: November 12, 1999

Before MICHAEL, MOTZ, and TRAXLER, Circuit Judges.

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Dismissed and remanded by unpublished per curiam opinion.

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**COUNSEL**

Densel Recardo Edwards, Appellant Pro Se. Michael Francis Joseph,  
Assistant United States Attorney, Greensboro, North Carolina, for  
Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

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## OPINION

### PER CURIAM:

Densel Edwards, a federal prisoner, appeals an order of the magistrate judge dismissing without prejudice his motion to vacate, set aside, or correct his sentence filed under 28 U.S.C.A. § 2255 (West Supp. 1999). The record in this case does not indicate that the district court referred this matter to the magistrate judge for consideration, or that the parties consented to the magistrate judge's jurisdiction. In the absence of a referral, the magistrate judge lacked authority to review this matter. See 28 U.S.C.A. § 636 (West 1994 & Supp. 1999); Parks By & Through Parks v. Collins, 761 F.2d 1101, 1104 (5th Cir. 1985). Moreover, the magistrate judge's unauthorized order is nonappealable. Id. at 1107 n.9.

Because the parties did not provide consent to the magistrate judge's jurisdiction, and the action involves an application for post-trial relief from a criminal conviction, it would appear that the magistrate judge purported to act under authority of § 636(b)(1)(B). Even had the magistrate judge received the requisite referral from a district court judge, however, its authority to act in a subsection (B) referral case would be limited to issuing recommendations rather than orders effectively disposing of the action, as in this case. See Continental Cas. Co. v. Dominick D' Andrea, Inc., 150 F.3d 245, 250 (3d Cir. 1998). Because the order appealed from was unauthorized and nonappealable, we deny a certificate of appealability, dismiss this appeal, and remand to the district court for further proceedings. See Massey v. City of Ferndale, 7 F.3d 506, 510-11 (6th Cir. 1993) (dismissing appeal from unauthorized order issued by magistrate judge but remanding to district court for corrective action). 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 AND REMANDED