

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7115

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DERRICK LAMONT LEGARDY,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. James A. Beaty, Jr., District Judge. (CR-98-213; CA-03-887)

Submitted: October 14, 2004

Decided: October 22, 2004

Before MOTZ, TRAXLER, and SHEDD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Derrick Lamont Legardy, Appellant Pro Se. John Warren Stone, Jr., Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Derrick Lamont Legardy seeks to appeal the district court's order dismissing his 28 U.S.C. § 2255 (2000) motion. 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 Legardy 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, Legardy failed to object to the magistrate judge's recommendation.

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 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). Legardy has waived appellate review by failing to file objections after receiving proper notice. Accordingly, we deny leave to proceed in forma pauperis, 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