

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-6063

MICHAEL OWENS,

Petitioner - Appellant,

versus

ANTHONY J. PADULA, Warden, Lee Correctional
Institution; JON OZMINT, Director, South
Carolina Department of Corrections; HENRY
MCMASTER, Attorney General of South Carolina,

Respondents - Appellees.

No. 07-6603

MICHAEL OWENS,

Petitioner - Appellant,

versus

ANTHONY J PADULA, Warden Lee Correctional
Institution; JON OZMINT; HENRY MCMASTER,
Attorney General of the State of South
Carolina,

Respondents - Appellees.

Appeals from the United States District Court for the District of
South Carolina, at Charleston. G. Ross Anderson, Jr., District
Judge. (2:06-cv-00639-GRA)

Submitted: May 30, 2007

Decided: July 9, 2007

Before NIEMEYER and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

No. 07-6063 dismissed; No. 07-6603 vacated by unpublished per curiam opinion.

Michael Owens, Appellant Pro Se. Derrick K. McFarland, OFFICE OF THE ATTORNEY GENERAL OF SOUTH CAROLINA, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In No. 07-6063, Michael Owens seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 (2000) petition. 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 Owens that failure to file timely, specific objections to this recommendation could waive appellate review of a district court order based upon the recommendation. Despite this warning, Owens failed to specifically object to the magistrate judge's recommendation.¹

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 of the consequences of noncompliance. Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985); see also Thomas v. Arn, 474 U.S. 140 (1985). Owens has waived appellate review by failing to timely file specific objections after receiving proper notice. Accordingly, we deny a certificate of appealability and dismiss the appeal.

¹Owens did not object to the substance of the magistrate's report, which determined that Owens' claims were procedurally defaulted. Instead of addressing his default, Owens' objections argued the merits of his § 2254 petition.

In No. 07-6603, Owens appeals the district court's order denying his motion for leave to appeal in forma pauperis. The district court denied the motion based on its finding that Owens' notice of appeal in case number 2:06-cv-00639-GRA was untimely. Because Owens noted a timely appeal from the denial of his § 2254 petition,² however, we grant leave to proceed in forma pauperis, deny a certificate of appealability and vacate the order of the district court.

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.

No. 07-6063 - DISMISSED
No. 07-6603 - VACATED

²The district court's final order denying § 2254 relief was entered on November 22, 2006. Owens gave his notice of appeal to prison officials for mailing on December 21, 2007. Under the rule of Houston v. Lack, 487 U.S. 266 (1988), the notice of appeal is deemed filed on December 21. It was therefore timely under Fed. R. App. P. 4(a)(1)(A).