

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-7266

WILLIAM ORLANDO SMITH,

Petitioner - Appellant,

v.

HAROLD W. CLARKE, Director, Virginia Department of
Corrections,

Respondent - Appellee.

No. 11-7467

WILLIAM ORLANDO SMITH,

Petitioner - Appellant,

v.

HAROLD W. CLARKE, Director, Virginia Department of
Corrections,

Respondent - Appellee.

Appeals from the United States District Court for the Eastern
District of Virginia, at Norfolk. Tommy E. Miller, Magistrate
Judge; Raymond A. Jackson, District Judge. (2:11-cv-00162-RAJ-
TEM)

Submitted: January 10, 2012

Decided: January 13, 2012

Before WILKINSON, KING, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

William Orlando Smith, Appellant Pro Se. Josephine Frances Whalen, Assistant Attorney General, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In No. 11-7266, William Orlando Smith seeks to appeal the magistrate judge's recommendation to dismiss Smith's 28 U.S.C. § 2254 (2006) petition. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2006), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2006); Fed. R. Civ. P. 54(b). The magistrate judge's recommendation is neither a final order nor an appealable interlocutory or collateral order. See Haney v. Addison, 175 F.3d 1217, 1219 (10th Cir. 1999) ("[a]bsent both designation by the district court and consent of the parties, a magistrate judge's recommendation is not a final appealable decision"). Accordingly, we dismiss the appeal for lack of jurisdiction.

In No. 11-7467, Smith seeks to appeal the district court's order dismissing as untimely his 28 U.S.C. § 2254 (2006) petition. The district court referred this case to a magistrate judge pursuant to 28 U.S.C.A. § 636(b)(1)(B) (West 2006 & Supp. 2011). The magistrate judge recommended that relief be denied and advised Smith that failure to file timely objections to this recommendation could waive appellate review of a district court order based upon the 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 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). Smith has waived appellate review by failing to timely file objections after receiving proper notice.* Accordingly, we deny a certificate of appealability and dismiss the appeal.

We deny Smith's motions for appointment of counsel. 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

* To the extent Smith's notice of appeal in No. 11-7266 can be considered his objections to the magistrate judge's report and recommendation, we discern no persuasive argument that would have warranted a different outcome before the district court.