

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-7115

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

RONALD MARCELLO CAVINESS,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. N. Carlton Tilley, Jr., District Judge. (CR-89-276, CA-97-445-2)

Submitted: December 17, 1998

Decided: January 6, 1999

Before WILKINS, NIEMEYER, and TRAXLER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Peter David Goldberger, LAW OFFICES OF ALAN ELLIS, Ardmore, Pennsylvania, for Appellant. Benjamin H. White, 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Unpublished opinions are not binding precedent in this circuit.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:

Ronald Marcello Caviness seeks to appeal the district court's orders denying his motion filed under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1998), and his motion for reconsideration. 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 Thomas v. Arn, 474 U.S. 140, 148-53 (1985); Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985). Appellant has waived appellate review by failing to file objections after receiving proper notice. Furthermore, the district court correctly found that appellant failed to demonstrate excusable neglect for failing to file timely objections to the magistrate judge's recommendation. Accordingly, we deny a certificate of appealability and dismiss the appeal on the reasoning of the district court. See United States v. Caviness, Nos. CR-89-276; CA-97-445-2 (M.D.N.C. Mar. 18 & May 29, 1998). 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