

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 98-7572**

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DAVID HARVEY BREWSTER,

Petitioner - Appellant,

versus

PAUL W. KIRBY, Warden,

Respondent - Appellee.

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Appeal from the United States District Court for the Northern District of West Virginia, at Wheeling. Frederick P. Stamp, Jr., Chief District Judge. (CA-95-119-5)

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Submitted: April 15, 1999

Decided: April 21, 1999

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

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Dismissed by unpublished per curiam opinion.

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Elaine Heceta McArdle, THE OFFICE OF MUSSER & MCARDLE, Wheeling, West Virginia, for Appellant. Darrell V. McGraw, Jr., OFFICE OF THE ATTORNEY GENERAL OF WEST VIRGINIA, Charleston, West Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

David Harvey Brewster seeks to appeal the district court's order dismissing his petition filed under 28 U.S.C.A. § 2254 (West 1994 & Supp. 1998). Brewster's case was referred to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (1994). The magistrate judge recommended that relief be denied and advised Brewster that failure to file timely objections to this recommendation could waive appellate review of a district court order based upon the recommendation. Brewster filed specific objections to the magistrate judge's recommendation. On appeal, however, Brewster seeks to appeal issues not addressed in his objections.

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 Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985). See generally Thomas v. Arn, 474 U.S. 140 (1985). Brewster has waived appellate review by failing to file objections regarding his claims on appeal. We accordingly 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