

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7582

THOMAS THOMPSON,

Petitioner - Appellant,

v.

WARDEN OF TYGER RIVER CORRECTIONAL INSTITUTION,

Respondent - Appellee,

and

SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE, AND
PARDON SERVICES,

Respondent.

Appeal from the United States District Court for the District of South Carolina, at Beaufort.
Timothy M. Cain, District Judge. (9:21-cv-00631-TMC)

Submitted: May 19, 2022

Decided: May 23, 2022

Before MOTZ and HARRIS, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

Thomas Thompson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Thomas Thompson, a South Carolina inmate proceeding pro se, appeals the district court's order dismissing his 28 U.S.C. § 2241 petition. The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B). The magistrate judge, construing Thompson's petition as one brought under 28 U.S.C. § 2254, recommended granting Respondent's motion for summary judgment. The magistrate judge advised Thompson that failure to file timely, specific objections to this recommendation could waive appellate review of a district court order based upon the recommendation. The district court, noting that it had not received objections from Thompson, accepted the magistrate judge's recommendation and dismissed Thompson's petition. Although we express no opinion regarding the merits of Thompson's suit, we vacate the dismissal and remand for further proceedings.

Ordinarily, a litigant has 14 days to file objections to a report and recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Under Federal Rule of Civil Procedure 6(d), when a party must act within a specified time after being served, and service is made by mail, the party has an additional three days to act. In the case of an unrepresented prisoner, a submission is considered filed on the day the prisoner hands it to prison officials to mail to the court. *Houston v. Lack*, 487 U.S. 266, 276 (1988).

Here, the magistrate judge entered her recommendation on September 17, 2021. Because Thompson received the magistrate judge's recommendation by mail, he had 17 days from September 17, 2021, to file objections. That deadline, as Thompson correctly argues, was October 4, 2021. Thompson dated and gave his objections to prison officials

for mailing on October 4. On October 5, 2021, before receiving Thompson's objections, the district court accepted the magistrate judge's recommendation and dismissed Thompson's petition, citing Thompson's failure to file objections.

Because Thompson's objections were timely filed under *Houston*, the district court was obligated to conduct a de novo review of the portions of the recommendation to which Thompson objected. 28 U.S.C. § 636(b). And because the district court dismissed Thompson's petition before receiving his timely objections, we must vacate the district court's judgment and remand for consideration of the objections. *See Orpiano v. Johnson*, 687 F.2d 44, 47-48 (4th Cir. 1982) (holding that failure to conduct de novo review of timely objections is reversible error). We grant Thompson's motion to file an addendum to his informal brief. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

VACATED AND REMANDED