

February 8, 2008

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
Elisabeth A. Shumaker
Clerk of Court

DARRELL WAYNE BAILEY,
Petitioner - Appellant,

v.

No. 08-6020

MARTY SIRMONS, Warden; DREW
EDMONDSON, Attorney General,
Respondents - Appellees.

ORDER

Before **TACHA, O'BRIEN, and TYMKOVICH**, Circuit Judges.

The magistrate judge who reviewed Darrel Wayne Bailey's petition seeking relief pursuant to 28 U.S.C. § 2254 recommended that the petition be denied. The judge magistrate's order also advised the parties that any objection to the recommendation was due by November 29, 2007, and further stated:

The parties are further advised that failure to make timely objection to this Report and Recommendation waives their respective right to appellate review of both factual and legal issues contained herein. *Moore v. United States of America*, 950 F.2d 656 (10th Cir. 1991).

R&R, p. 12-13.

Despite this advisory, Mr. Bailey, who is proceeding without legal representation, filed no objection, as noted in the district court's order adopting the recommendation and denying habeas relief.

Following the denial of a post-judgment motion, Mr. Bailey nevertheless filed a notice of appeal. We opened case No. 08-6020, and issued an order directing Mr. Bailey to show cause why the appeal should not be dismissed for failing to object to the Report and Recommendation. Mr. Bailey responded and the matter was submitted to the court.

If a litigant fails to object to a judge magistrate's recommendation, that party waives his right to appellate review of the district court's factual and legal determinations under this circuit's "firm waiver rule." See In re: Key Energy Resources, Inc., 230 F.3d 1197, 1199-1200 (10th Cir. 2000); Moore v. United States, 950 F.2d 656, 659 (10th Cir. 1991). The waiver rule applies to a pro se party unless: (1) the party has not been informed of the time period within which to file objections and the consequences for failing to do so, or (2) the "interests of justice" require review. Morales-Fernandez v. INS, 418 F.3d 1116, 1119 (10th Cir. 2005).

In this instance, Mr. Bailey was clearly informed of the time period for filing an objection and of the consequences for failing to do so. Further, upon review of the case, we do not conclude that the interests of justice require that we depart from our firm

waiver rule. Mr. Bailey waived the right to appellate review. Accordingly, this appeal is dismissed.

Entered for the Court
ELISABETH A. SHUMAKER
Clerk of Court

A handwritten signature in black ink, appearing to read "Douglas E. Cressler", written over a light gray rectangular background.

by:
Douglas E. Cressler
Chief Deputy Clerk