UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-6435

RONALD WAYNE LEWIS,

Plaintiff - Appellant,

v.

STEPHEN WILEY MILLER, United States Attorney; KEVIN CHRISTOPHER NUNNALLY, United States Attorney; TANYA HELENA POWELL, United States Attorney,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. James R. Spencer, Chief District Judge. (3:10-cv-00129-JRS)

Submitted: August 29, 2011 Decided: December 23, 2011

Before SHEDD, AGEE, and DIAZ, Circuit Judges.

Remanded by unpublished per curiam opinion.

Ronald Wayne Lewis, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

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PER CURIAM:

Ronald Wayne Lewis appeals from the district court's order accepting the recommendation of the magistrate judge and dismissing his civil action. On appeal, Lewis contends that he did not receive the magistrate judge's report and recommendation and therefore did not have the opportunity to file objections. Lewis also filed in the district court a "notice" stating that he did not receive the report and recommendation.

The timely filing of objections is necessary to preserve appellate review of a district court's order adopting the recommendation. See Wright v. Collins, 766 F.2d 841 (4th Cir. 1985). Here, if in fact Lewis did not receive the report and recommendation, he was thereby prevented from obtaining de novo review of the recommendation by an Article III judge. See Orpiano v. Johnson, 687 F.2d 44, 47-48 (4th Cir. 1982).

On April 5, 2011, Lewis filed a notice in the district court stating that he did not receive the report and recommendation. However, because Lewis had already noted his appeal, the district court did not have jurisdiction to act on that notice, which can be construed as a motion for reconsideration pursuant to Fed. R. Civ. P. 59(e). In light of Lewis's contention that he did not receive the report and recommendation, we remand the case to the district court for it to construe the April 5, 2011 notice as a Rule 59(e) motion for

reconsideration. We express no opinion as to whether reconsideration is warranted. 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.

REMANDED