

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7546

STEPHEN K. HARRIS,

Petitioner - Appellant,

v.

R. M. WOLFE, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Northern District of West Virginia, at
Wheeling. John Preston Bailey, District Judge. (5:21-cv-00052-JPB)

Submitted: August 31, 2022

Decided: June 13, 2023

Before GREGORY, Chief Judge, and HARRIS and RUSHING, Circuit Judges.

Vacated and remanded by unpublished per curiam opinion.

Stephen K. Harris, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Stephen K. Harris, a District of Columbia prisoner, 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 recommended granting Respondent's motion to dismiss Harris's petition and advised Harris that failure to file timely objections could waive appellate review of a district court's order based on the recommendation. On October 5, 2021, the district court determined that no objections had been filed. Nonetheless, it said that it had conducted a *de novo* review of the record, and it accepted the magistrate judge's recommendation and dismissed Harris's petition.

But the record discloses that Harris submitted objections to the district court and dated them October 1, 2021, 14 days after the magistrate judge's report was served to his Bureau of Prisons facility and thus within the deadline for timely objections. *See* 28 U.S.C. § 636(b)(1)(C). Harris's objections were postmarked on October 4, 2021, however, and his certificate of service was not signed. Therefore, it is not clear whether Harris's objections were timely under *Houston v. Lack*, 487 U.S. 266, 276 (1988) (deeming document filed when given to prison officials for mailing). Accordingly, we vacate the district court's order and remand for the district court to decide whether Harris's objections were timely filed. If the district court finds that Harris's objections were timely filed, then the court should review the magistrate judge's report and recommendation in light of Harris's objections. We express no opinion on the merits of Harris's claims.

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