

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-6105

DANIEL DRAPER,

Plaintiff - Appellant,

v.

MS. BARNES, Warden; DR. ONAHA, Medical Doctor; MRS. RAMSEY, Medical Nurse,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Beaufort.
Timothy M. Cain, District Judge. (9:21-cv-00185-TMC)

Submitted: April 14, 2022

Decided: April 19, 2022

Before DIAZ and RUSHING, Circuit Judges, and KEENAN, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

Daniel Draper, Appellant Pro Se. Beth Drake, Acting United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Daniel Draper appeals the district court's order dismissing without prejudice his action filed under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), for failure to exhaust administrative remedies. The district court referred this case to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B). The magistrate judge recommended dismissing the complaint and advised Draper that failure to file timely, specific objections to this recommendation could waive appellate review of a district court order based upon the recommendation. Draper did not file objections, and the district court accepted the magistrate judge's recommendation to dismiss the complaint. The district court subsequently issued a text order stating that it received notification that the magistrate judge's report and recommendation was mistakenly mailed to the incorrect person and correctional facility.

All parties must be served with and given an opportunity to object to the findings and recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1)(C). Here, the record establishes that Draper did not receive the magistrate judge's report and recommendation before the district court issued its dismissal order, thus depriving Draper of his right to file objections. Accordingly, we vacate the district court's dismissal order; grant Draper's motion to remand the case to the district court; and remand with instructions to serve the magistrate judge's report and recommendation on Draper and to provide him with an

opportunity to file objections.* We deny Draper's motions to appoint counsel and to send an investigator to FCI Bennettsville. 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

* Defendants do not oppose Draper's motion to remand the case to the district court to allow Draper the opportunity to file objections to the magistrate judge's report and recommendation.