

UNITED STATES COURT OF APPEALS **December 14, 2011**

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

In re: ANTHONY C. KENNEY,
Appellant.

No. 11-5095
(D.C. No. 4:11-MC-00014-CVE-FHM)
(N.D. Oklahoma)

ORDER AND JUDGMENT*

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

After examining Appellant's brief and the appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). This case is therefore ordered submitted without oral argument.

Appellant Anthony Kenney, a repeat pro se litigant subject to a court-ordered filing restriction, appeals from the district court's denial of permission to file proposed pleadings. The magistrate judge recommended that permission be denied based on Appellant's failure to comply with the procedures outlined in the 2010 district court order that imposed the filing restriction. Appellant did not file any objections to this recommendation, which was then accepted by the district court. This appeal followed.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

As Appellant was warned in the magistrate judge's recommendation, this court "ha[s] adopted 'a firm waiver rule'" under which "'the failure to make timely objections to the magistrate's findings or recommendations waives appellate review of both factual and legal questions.'" *United States v. One Parcel of Real Property*, 73 F.3d 1057, 1059 (10th Cir. 1996) (quoting *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991)). Although we may vary from this rule "when the interests of justice so dictate," see *Moore*, 950 F.2d at 659, nothing in Appellant's brief or the record on appeal suggests a reason for this exception to apply. See *Morales-Fernandez v. INS*, 418 F.3d 1116, 1119-20 (10th Cir. 2005) (listing factors this court has considered in determining whether to invoke the interests-of-justice exception). Appellant's failure to object to the magistrate judge's recommendation is thus fatal to his case.¹

The district court's denial of permission to file the proposed pleadings is **AFFIRMED**. We **DENY** Appellant's motion to proceed *in forma pauperis* on appeal and instruct him to immediately pay the unpaid balance of his appellate filing fee.

ENTERED FOR THE COURT

Monroe G. McKay
Circuit Judge

¹ Moreover, even if this issue had not been waived, we see no error in the magistrate judge's recommendation that permission to file should be denied. Appellant's proposed pleadings clearly did not satisfy the requirements of the 2010 filing restriction.