[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-10051

Non-Argument Calendar

DOYLE L. HEARD,
a.k.a. Doye L. Heard,

Plaintiff-Appellant,

versus

FLORIDA DEPARTMENT OF CORRECTIONS SECRETARY, et al.,

Defendants,

GOVERNOR, STATE OF FLORIDA,
MELINDA N. COONROD,
Commissioner Secretary,

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:20-cv-00539-WS-MJF

Before NEWSOM, BRANCH, and GRANT, Circuit Judges.

PER CURIAM:

I.

Plaintiff Doyle L. Heard was sentenced in state court to consecutive prison terms for robbery and kidnapping. Heard has since been released on parole twice but violated the conditions of his parole both times, resulting in revocation of his parole, denial of credit for time spent on parole, and forfeiture of gain-time awards.[1] In response, Heard filed a petition for writ of habeas corpus in state court challenging the calculation of the forfeited gain-time. *Heard v. Dep't of Corrs.*, 264 So. 3d 214, 215 (Fla. Dist. Ct.

[1] Fla. Stat. § 944.275 authorizes the Florida Department of Corrections to grant gain-time awards, which is a sentence deduction to incentivize good behavior, participation in productive activities, and performing outstanding deeds or services.

App. 2018). The state court denied relief, Heard appealed, and the Florida Court of Appeals denied certiorari. *Id.* at 215, 217.

Heard then brought the present § 1983 suit in federal district court against Florida Secretary of Corrections Ricky D. Dixon (and his successor Mark S. Inch), Florida Governor Ron DeSantis, and Chairman of the Florida Commission on Offender Review Melinda N. Coonrod, all in their individual and official capacities. According to Heard, his sentence was initially significantly reduced by gain-time awards he accrued. He argues that he has been improperly deprived of these gain-time awards and that his sentence has thereby been miscalculated.

Under the Prison Litigation Reform Act, a magistrate judge reviewed Heard's first amended complaint sua sponte and issued a report recommending dismissal of all his claims for failure to state a claim because Heard's § 1983 action is being used to challenge the duration of his confinement in violation of *Heck v. Humphrey*, 512 U.S. 477 (1994), and *Wilkinson v. Dotson*, 544 U.S. 74 (2005). The district court adopted the recommendation and report (over Heard's objections) and dismissed his suit. Heard then appealed, and this Court affirmed in part and reversed in part. We explained that while some of Heard's claims were properly dismissed under *Heck* and *Wilkinson*, others were improperly dismissed because they could be construed as claims for damages that did not necessarily require a judgment on the validity of his conviction or sentence. This Court thus partially reversed the district court and

remanded to allow Heard to amend his complaint and provide sufficient factual allegations for his remaining § 1983 claims.

On remand, Heard amended his complaint three times. His fourth (and operative) amended complaint reasserts the claims previously remanded by this Court: he alleges an ex post facto violation based on the adjustment of his sentence; he alleges cruel and unusual punishment in violation of the Eighth Amendment due to his continued confinement and sentence miscalculation; he alleges deliberate indifference in violation of the Eighth Amendment due to the miscalculation of his sentence; he alleges a "bogus arrest warrant," conspiracy, and lack of probable cause due to the miscalculation of his sentence all in violation of the Fourth Amendment; and he alleges double and triple jeopardy in violation of the Fifth Amendment based on the adjustment to his sentence. Heard requests return of his gain-time credits and compensation for each day those credits were withheld from him.

The magistrate judge again recommended dismissal, concluding that granting relief on any of Heard's claims would require a holding that his current confinement was invalid and that he was entitled to release, relief that can only be granted through a habeas corpus action. Heard objected to the report and recommendation, but the district court overruled his objections, adopted the report and recommendation in full, and dismissed his § 1983 claims. Heard appeals.

II.

We review de novo a district court's sua sponte dismissal for failure to state a claim and failure to satisfy the statute of limitations. *Karantsalis v. City of Miami Springs*, 17 F.4th 1316, 1319 (11th Cir. 2021). A complaint fails to state a claim if, after disregarding any conclusory allegations, no factual allegations remain that "plausibly give rise to an entitlement to relief." *McCullough v. Finley*, 907 F.3d 1324, 1333 (11th Cir. 2018) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). Additionally, claims in which judgment in favor of the plaintiff would necessarily require a determination on the validity of his conviction or sentence must be dismissed unless the conviction or sentence has already been invalidated. *Heck v. Humphrey*, 512 U.S. 477, 487 (1994); *Wilkinson v. Dotson*, 544 U.S. 74, 81 (2005).

Pro se complaints should be construed liberally but still must comply with the procedural rules. *McNeil v. United States*, 508 U.S. 106, 113 (1993). The usual rule is that leave to amend "shall be freely given when justice so requires." *Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001) (quotation omitted). Pro se plaintiffs must be given at least one chance to amend their complaints when a more carefully drafted complaint might state a claim. *Id.* But "when the complaint as amended would still be properly dismissed or be immediately subject to summary judgment for the defendant," amendment is futile and need not be granted. *Cockrell v. Sparks*, 510 F.3d 1307, 1310 (11th Cir. 2007).

III.

A plaintiff seeking damages under § 1983 for allegedly unconstitutional conviction or imprisonment must first "prove that the conviction or sentence has been reversed on direct appeal" via a habeas corpus claim. *Heck*, 512 U.S. at 486–87. A prisoner "cannot use § 1983 to obtain damages where success *would necessarily* imply the unlawfulness of a (not previously invalidated) conviction or sentence." *Wilkinson*, 544 U.S. at 81. Courts should thus "consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." *Heck*, 512 U.S. at 487.

Heck and *Wilkinson* bar Heard's § 1983 claims. Heard's fourth amended complaint alleges that Defendants violated various of his constitutional rights, but all of his claims are based on the alleged miscalculation of his sentence. Indeed, Heard's requested relief is gain-time credits and "compensation deemed just, equitable and appropriate" for each day he was allegedly unconstitutionally imprisoned. Granting Heard relief on any of his constitutional claims would imply that his current confinement or sentence is invalid, a determination that has not been made via any of Heard's prior habeas petitions. Because a "prisoner cannot use § 1983 to obtain damages where success would necessarily imply the unlawfulness of a (not previously invalidated) conviction or sentence," Heard's § 1983 claims fail. *See Wilkinson*, 544 U.S. at 81 (emphasis omitted); *see also Heck*, 512 U.S. at 487.

Heard also claims a Fourth Amendment violation because officers conspired, lacked probable cause, and got a "bogus arrest warrant." As we noted in Heard's prior appeal, it was possible that his Fourth Amendment claims would not require a judgment on the validity of his conviction or sentence. *Heard v. Florida Dep't of Corrs. Sec'y*, 2022 WL 1740690, at *2 (11th Cir. May 31, 2022). But we also noted that his claims lacked "specific factual allegations" and remanded to allow him the chance to amend accordingly. *Id.*

Since then, Heard has had three chances to amend his complaint and has still failed to provide sufficient factual allegations to support a valid claim. He argues that officers withheld his gain-time awards without probable cause, which requires a judgment on the validity of his sentence and is thus barred. He also says that officers committed a conspiracy by issuing a "bogus arrest warrant," but provides no factual support for this assertion. These claims are conclusory at best and must be dismissed. *See McCullough*, 907 F.3d at 1333.

IV.

In addition to his § 1983 claims, Heard takes issue with the district court's adoption of the magistrate judge's report and recommendation. Under 28 U.S.C. § 636(b)(1), a district court may refer motions to dismiss to a magistrate judge to hear evidence, issue a report with its findings, and provide a recommendation to the district court. *United States v. Raddatz*, 447 U.S. 667, 673 (1980). A party may object to the report and recommendation. *Id.* Then, the district court, after considering the report and recommendation

as well as any objections, may adopt, reject, or modify the report and recommendation. *Id.* at 673–74. The district court must make a de novo determination with respect to any disputed portions, but it need not conduct a new hearing before adopting the report and recommendation. *Id.* at 675–76.

Heard alleges that the district court improperly dismissed his claims by simply putting a "rubber stamp" on the magistrate judge's report and recommendation without properly doing its own investigation or review. But district courts are allowed to rely on such reports and recommendations so long as they consider any objections and the relevant law, which the district court here did. *See Raddatz*, 447 U.S. at 673–74. According to Heard, the district court disregarded the facts and allegations of his complaint. But there is no evidence that the district court disregarded Heard's complaint; rather, the district court properly concluded that Heard's claims are barred by *Heck* and *Wilkinson*. Nor was there any due process violation: Heard was given the opportunity to object to the report and recommendation (which he did), and the district court considered and rejected that objection before entering its final order. *See Vanderberg v. Donaldson*, 259 F.3d 1321, 1324 (11th Cir. 2001). Thus, the district court did not improperly rely on the magistrate's report and recommendation.

* * *

Because Heard cannot use § 1983 to challenge the validity of his current sentence, his claims are barred. Since the last time we reviewed his case, Heard has had many opportunities to correct

any deficient pleadings, and he has failed to do so. The district court did not err when it adopted the magistrate judge's report and recommendation and dismissed Heard's claims. We affirm.

AFFIRMED.