IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-13867-E

STEPHENSON LAMAR SMITH,

Plaintiff-Appellant,

versus

TED JACKSON,
et al,
ERIC HENRY,
Atlanta PD; Badge No. 5143,
S. STEWARD,
Atlanta PD; Badge 3903,
R. DANIELS,
Atlanta PD - Badge 0728,
D. ACEVEDO,
Crime Scene Tech. 5685,
et al.,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Georgia

ORDER:

Stephenson Lamar Smith, proceeding *pro se*, seeks leave to proceed on appeal *in forma pauperis* ("IFP") to challenge the district court's denial of his motion to reopen, following its dismissal of his 42 U.S.C. § 1983 complaint without prejudice. He also moves for appointment of counsel. As brief background, Smith's § 1983 action named 34 local, state, and federal

officials as defendants, and alleged that he was falsely arrested, falsely imprisoned, and maliciously prosecuted. The district court originally dismissed the appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2), because: (1) several of the defendants were due to be dismissed from the case, either because they were immune from suit or because the complaint did not include any specific allegations against them; (2) the court could not grant Smith's request for mandamus relief; and (3) Smith's false-arrest and false-imprisonment claims should be dismissed because they were time-barred. Additionally, the magistrate judge found that Smith had not alleged sufficient facts to proceed on his malicious-prosecution claim. Over a year after that dismissal, Smith filed the instant motion to reopen, in which he listed nine "question[s] presented," all of which again related to his alleged false arrest, false imprisonment and malicious prosecution.

Because Smith seeks leave to proceed on appeal IFP, his appeal is subject to a frivolity determination. *See* 28 U.S.C. § 1915(e)(2)(B). An action is frivolous if it is without arguable merit either in law or fact. *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002). A district court's denial of a motion to reopen is generally reviewed only for an abuse of discretion. *See McDaniel v. Moore*, 292 F.3d 1304, 1305 (11th Cir. 2002) (considering a motion to reopen the time to appeal under Fed. R. App. P. 4(a)(6)).

Here, the district court did not abuse its discretion in declining to reopen Smith's § 1983 proceedings. As the district court noted, Smith made no attempt to clarify his pleadings to state any cognizable claims, nor did he remove any defendants who were determined to be immune from suit. Rather, he restated the same claims and attached additional documentary evidence in support of those claims. However, regardless of the content of the attached documents, they cannot cure the pleading deficiencies originally identified by the magistrate judge. Moreover, in

his motion, and amended motion, for IFP status filed in this Court, Smith makes no effort to identify any non-frivolous issues with regard to the district court's denial of his motion to reopen. Instead, he continues to focus on the merits of his underlying claims.

Because the district court did not abuse its discretion in denying Smith's motion to reopen, any appeal in the instant case would be frivolous, and his motion for leave to proceed IFP is DENIED. His motion for appointment of counsel also is DENIED, as Smith has not shown that his case presents to sort of "exceptional circumstances" that would warrant appointment of counsel in a civil appeal. *See Kilgo v. Ricks*, 983 F.2d 189, 193 (11th Cir. 1993).

UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

STEPHENSON LAMAR SMITH, Plaintiff,	:	
	:	CIVIL ACTION NO.
v.	:	1:16-CV-4519-RWS
TED JACKSON; et al., Defendants.	:	

ORDER

On April 20, 2017, this Court adopted the Magistrate Judge's Report and Recommendation and dismissed Plaintiff's complaint for his failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2). [Doc. 10]. The Eleventh Circuit later dismissed Plaintiff's appeal. [Doc. 18].

Over a year after this action was originally dismissed, Plaintiff has now filed a "Motion to Re-open the Case." [Doc. 19]. Because Plaintiff's motion does nothing to cure the deficiencies in his complaint identified by the Magistrate Judge and adopted by this Court, it is hereby **DENIED**.

IT IS SO ORDERED, this 24th day of Aug., 2018.

RICHARD W. STORY
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

STEPHENSON LAMAR SMITH,	:	
Plaintiff,	:	PRISONER CIVIL RIGHTS
	:	42 U.S.C. § 1983
v.	:	
	:	
TED JACKSON; et al.,	:	CIVIL ACTION NO.
Defendants.	:	1:16-CV-4519-RWS-JSA

MAGISTRATE JUDGE'S ORDER AND NON-FINAL REPORT AND RECOMMENDATION

Before the Court is *pro se* Plaintiff Stephenson Lamar Smith's civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff's request to proceed *in forma pauperis* [Docs. 1, 3] is **GRANTED**, and the matter is before the Court for a frivolity screening pursuant to 28 U.S.C. § 1915(e)(2).[1]

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[1] Plaintiff was a frequent filer while he was incarcerated and was prohibited from filing any further *in forma pauperis* complaints under the three strikes provision contained in 28 U.S.C. § 1915(g). *See, e.g., Smith v. Jackson, et al.*, Civil Action No. 1:16-CV-1673-RWS (dismissing complaint without prejudice under 28 U.S.C. § 1915(g)). Because Plaintiff is no longer incarcerated, however, § 1915(g) does not apply. *See Cofield v. Bowser*, 247 F. App'x 413, 414 (4th Cir. 2007) (per curiam) ("A former inmate who has been released is no longer 'incarcerated or detained' for the purposes of § 1997e(h) and therefore does not qualify as a prisoner subject to the PLRA."); *Nazari v. United States Federal Probation/USPO*, No. CV-409-015, 2009 WL 1322302, at *2 (S.D. Ga. May 11, 2009) ("[P]laintiff here is no longer an inmate, so the PLRA, and thus § 1915(g), cannot be applied to him.").

I. 28 U.S.C. § 1915(e)(2) Frivolity Review

Pursuant to 28 U.S.C. § 1915(e)(2), a federal court is required to conduct an initial screening of an *in forma pauperis* complaint to determine whether the action is: (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B)(I)-(iii). A claim is frivolous when it "lacks an arguable basis either in law or in fact." *Bingham v. Thomas*, 654 F.3d 1171, 1175 (11th Cir. 2011) (quoting *Miller v. Donald*, 541 F.3d 1091, 1100 (11th Cir. 2008)) (internal quotation marks omitted). To state a claim, a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "A plaintiff . . . must plead facts sufficient to show that [his] claim has substantive plausibility" and inform the defendant of "the factual basis" for the complaint. *Johnson v. City of Shelby, Miss.*, __ U.S. __, 135 F. Ct. 346, 347 (2014).

To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must allege that: (1) an act or omission deprived him of a right, privilege, or immunity secured by the Constitution or a statute of the United States; and (2) the deprivation occurred under color of state law. *Richardson v. Johnson*, 598 F.3d 734, 737 (11th

Cir. 2010). If a plaintiff cannot satisfy those requirements, or fails to provide factual allegations in support of the claim, the complaint may be dismissed. *Id.* at 737-38.

II. Discussion

A. Plaintiff's Claims

Plaintiff has named several Defendants in this case: Fulton County Sheriff Ted Jackson; Fulton County Jail Sergeant Livingston; Atlanta Police Department ("APD") Officers Eric Henry, S. Stewart, R. Daniels, and Vernon Patterson; APD Crime Technologist D. Acevedo; an unknown APD Sergeant who approved Plaintiff's arrest; Fulton County District Attorney Paul Howard; Fulton County Assistant District Attorneys Edward Chase and George Jenkins; Fulton County Judges Shawn Lagrua, G. Lall, E. Rogan, Constance Russell, and Ural Glannville; an unknown Fulton County Judge's case manager; an unknown Fulton County court reporter; an unknown person in Fulton County pretrial services; retired U.S. Magistrate Judge E. Clayton Scofield III and U.S. Magistrate Judge Russell G. Vineyard; Eleventh Circuit Justices Flat, Wilson, and Pryor; Former U.S. Attorney Sally Yates; Fulton County Public Defender Vernon S. Pitt, Jr.; Assistant Fulton County Public Defenders Overton Thierry, Elizabeth Markowitz, Lavron Shubon,

and Charlene Burton; Fulton County Public Defender Legal Assistant Ms. Nunn; and Doctors Brian Shief, Nicole Fier, and Bryon McQuit. From what the Court can glean from the disjointed and rambling amended complaint, Plaintiff appears to claim that he was falsely arrested, falsely imprisoned, and maliciously prosecuted.[2] Plaintiff seeks mandamus relief and damages.

B. Several Parties Should Be Dismissed From This Case.

1. The Sheriff, District Attorney, Assistant District Attorneys, Former U.S. Attorney, Judges, And Justices Are Improper Parties.

a. The Prosecutors

Prosecutors are absolutely immune from suit under § 1983 in their individual capacities for "prosecutorial actions that are intimately associated with the judicial phase of the criminal process." *Van de Kamp v. Goldstein*, 555 U.S.

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[2] The undersigned notes that Plaintiff styled the original complaint as a "Petition for Refiling Writ Of Mandamus" and the Clerk docketed it as this civil rights action pursuant to 42 U.S.C. § 1983. (Doc. 1). Because "throughout this document Plaintiff sets forth questions and citations, the allegations are extremely confusing, and the Court cannot determine whether he has stated a claim under § 1983 or the mandamus statute[,]" on January 5, 2017, the Court ordered Plaintiff to file an amended complaint on the proper forms with specific instructions. (Doc. 2). Despite the fact that Plaintiff did not follow the Court's instructions when filing the amended complaint, the Court will attempt to parse out his claims.

335, 340-41 (2009) (internal quotations omitted). The general rule is that a prosecutor enjoys absolute immunity when he functions as a prosecutor in judicial proceedings, including filing criminal charges, initiating and prosecuting a criminal case, participating in court hearings in the case, and seeking warrants. *Id.* at 342-43; *see also Kalina v. Fletcher*, 522 U.S. 118, 129 (1997) (holding absolute prosecutorial immunity for filing information and motion for arrest warrant); *Burns v. Reed*, 500 U.S. 478, 487 (1991) (holding prosecutor immune from damages for participating in probable cause hearing); *Imbler v. Pachtman*, 424 U.S. 409, 413 (1976) (holding immunity applies to prosecutor initiating and presenting the State's case). In short, "acts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as advocate of the State, are entitled to the protections of absolute immunity." *Buckley v. Fitzimmons*, 509 U.S. 259, 273 (1993). *See also Jones v. Cannon*, 174 F.3d 1271, 1281 (11th Cir. 1999) (stating that a prosecutor is absolutely immune for actions taken as an advocate).

It is clear from the complaint that all of the actions about which Plaintiff complains are based on the prosecutors' role as advocates for the State of Georgia in pursuing a criminal prosecution against Plaintiff. Even if, as Plaintiff claims,

they did not have probable cause, Fulton County District Attorney Paul Howard and Fulton County Assistant District Attorneys Edward Chase and George Jenkins still are absolutely immune from liability under § 1983 and should be dismissed. *See Buckley*, 509 U.S. at 274 n.5 (holding prosecutors are "entitled to absolute immunity for the malicious prosecution of someone whom [they] lacked probable cause to indict."); *Van de Kamp*, 555 U.S. at 344-45 (holding absolute immunity shields prosecutors' decisions about indictment or trial prosecution); *Kalina*, 522 U.S. at 124 (holding absolute immunity protects prosecutors from claims they maliciously commenced a prosecution); *Jones*, 174 F.3d at 1281 ("A prosecutor is absolutely immune from suit for malicious prosecution."). Additionally, Plaintiff has not provided any allegations whatsoever in connection with former U.S. Attorney Sally Yates and it is not clear how, as a former federal prosecutor and U.S. Attorney, she even would have been involved in Plaintiff's state criminal court proceedings. Accordingly, Ms. Yates also should be dismissed from this case. *See Douglas v. Yates*, 535 F.3d 1316, 1322 (11th Cir. 2008) ("[A] complaint will be held defective . . . if [it] fails to connect the defendant with the alleged wrong.") (citation omitted).

b. The Judges And Justices

Similar to the prosecutors, all of the judges and justices Plaintiff has named in the complaint also are immune from suit under § 1983. Indeed, "[j]udges are entitled to absolute immunity from civil liability under section 1983 for acts performed in their judicial capacity, provided such acts are not done in the 'clear absence of all jurisdiction.'" *Scruggs v. Lee*, 256 F. App'x 229, 233 (11th Cir. 2007) (quoting *Stump v. Parkman*, 435 U.S. 349, 357 (1978). Other than asserting conclusory statements (*e.g.*, "failing to provide 'prompt' judicial determination of probable cause") and complaints that Plaintiff allegedly did not receive a first appearance, preliminary hearing, and/or arraignment, Plaintiff does not provide any allegations that would connect any judge to any action he claims violated his rights, let alone any actions done in the "clear absence of all jurisdiction." Nor has Plaintiff identified any actions whatsoever on the part of the unknown Fulton County court reporter and the unknown Fulton County Judge's case manager. Accordingly, Fulton County Judges Shawn Lagrua, G. Lall, E. Rogan, Constance Russell, and Ural Glannville, the unknown Fulton County Judge's case manager, the unknown Fulton County court reporter, an unknown person in Fulton County pretrial services, retired U.S. Magistrate Judge E. Clayton Scofield III, U.S.

Magistrate Judge Russell G. Vineyard, and Eleventh Circuit Justices Flat, Wilson, and Pryor all should be dismissed from this action. *See Douglas*, 535 F.3d at 1322.

c. Sheriff Jackson And Fulton County Jail Sergeant Livingston

Although Plaintiff names Sheriff Ted Jackson and Fulton County Jail Sergeant Livingston as defendants, it is not clear whether he sues either of them in their official capacities, their individual capacities, or both, as he provides no allegations connecting either Sheriff Jackson or Sergeant Livingston to any of his claims. To the degree that this Court could construe the complaint liberally and presume that Plaintiff claims that both Sheriff Jackson and Sergeant Livingston were involved in Plaintiff's alleged false imprisonment, arrest and/or malicious prosecution, any claim against either Sheriff Jackson or Sergeant Livingston in their official capacities is barred by the Eleventh Amendment. *See Scruggs v. Lee*, 256 F. App'x 229, 232 (11th Cir. 2007) (concluding that the sheriff and his deputies are entitled to Eleventh Amendment immunity when sued in their official capacities); *Purcell ex. rel Estate of Morgan v. Toombs Cnty.*, 400 F.3d 1313, 1324-25 (11th Cir. 2005) (stating that the Eleventh Amendment bars official-capacity damages actions against a Georgia sheriff because "a Georgia sheriff sued

in his official capacity functions as an 'arm of the State'" when promulgating policies and procedures governing conditions of confinement) (citations omitted); *see also McDaniel v. Yearwood*, No. 2:11-CV-00165-RWS, 2012 WL 526078, at *11 (N.D. Ga. Feb. 16, 2012) (Story, J.) (applying Eleventh Amendment immunity to sheriff in connection with the plaintiff's malicious prosecution claim against the sheriff in his official capacity).

To the degree that Plaintiff attempts to allege a claim against either Sheriff Jackson or Sergeant Livingston in their individual capacities, Plaintiff has provided no specific allegations whatsoever against either defendant as to how either of them personally participated in the alleged malicious prosecution.[3] Thus, any individual-capacity claims Plaintiff attempts to raise against Sheriff Jackson or Sergeant Livingston also should be dismissed. *See Douglas*, 535 F.3d at1322.

d. The Named Doctors And Public Defender Employees Are Private Parties.

Plaintiff has named three doctors; however, he has failed to allege any actions any of them engaged in that he claims violated his rights. Plaintiff also has

[3] As discussed more thoroughly in Section II.D., Plaintiff's false arrest and false imprisonment claims are time-barred.

not alleged that any of those doctors acted under color of state law, which is required for § 1983 to apply. Likewise, § 1983 would not apply to any persons Plaintiff named from the Fulton County Public Defender's Office because they did not act under color of state law. *See, e.g., Polk Cnty. v. Dodson*, 454 U.S. 312, 325 (1981) ("[A] public defender does not act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding."); *Vermont v. Brillon*, 556 U.S. 81, 91 (2009) ("Unlike a prosecutor or the court, assigned counsel ordinarily is not considered a state actor."); *see also Nicol v. Morocco*, No. 16-202, 2016 WL 1383504, at *4 (W.D. Pa. Mar. 11, 2016) (stating that the rule that public defenders or private attorneys are not state actors also applies to paralegals); *accord Mosley v. Tate*, No. 3:13-CV-66-RJC, 2013 WL 653271, at *5 (W.D. N.C. Feb. 21, 2013). Accordingly, the named doctors and persons in the Fulton County Public Defender's Office all should be dismissed.

C. This Court Cannot Grant Plaintiff Mandamus Relief.

In several places in the amended complaint Plaintiff asks for unspecified mandamus relief, again citing legal conclusions and non-factual allegations. It is not clear what, if any, mandamus relief Plaintiff seeks, since the criminal charges about which he complains have been dismissed. Federal courts are granted

jurisdiction in a mandamus action "to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff," 28 U.S.C. § 1361, but, as discussed previously herein in Section II.B.1., *supra*, any and all federal defendants should be dismissed from this case. And this Court has no general power to issue writs of mandamus to direct a state official or private party in contract with a state agency, in the performance of his or her duties. *See Pennhurst v. State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984) (establishing that the Eleventh Amendment bars federal courts from using the writ of mandamus to compel state officers to comply with state law in the performance of their duties); *Brown v. Lewis*, 361 F. App'x 51, 56 (11th Cir. 2010) (per curiam) ("'[A] federal court lacks the general power to issue writs of mandamus to direct state courts and their judicial officers in the performance of their duties where mandamus is the only relief sought.") (quoting *Moye v. Clerk, DeKalb County Superior Court*, 474 F.2d 1275, 1276 (5th Cir. 1973)). Thus, this Court has no authority to grant Plaintiff's request for mandamus relief.

D. Plaintiff's False Arrest And False Imprisonment Claims Are Time-Barred.

Plaintiff's false arrest and false imprisonment claims also fail under § 1983 because they are time-barred. Federal courts apply their forum's statute of limitations for actions brought under § 1983. *Foudy v. Indian River County Sheriff's Office*, 845 F.3d 1117, 1123 (11th Cir. 2017). Georgia's two-year statute of limitations therefore applies to this case. *See Reynolds v. Murray*, 170 F. App'x 49, 50-51 (11th Cir. 2006) ("Reynolds' complaint was filed in Georgia, where the alleged violations of his rights occurred and where the general personal injury statutory limitation period is two years."); *see also Presnell v. Paulding Cnty., Ga.*, 454 F. App'x 763, 767 (11th Cir. 2011) (indicating that Georgia's two-year statute of limitations applied to § 1983 claims of false arrest, false imprisonment, and malicious prosecution).

Federal law, however, governs the date that the claim accrues, and provides that "the statute of limitations begins to run when 'the facts which would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his rights.'" *Betts v. Hall*, __ F. App'x __, 2017 WL 526055, at *2 (11th Cir. Feb. 9, 2017) (citations omitted). To that end, a claim for false

arrest accrues "when the plaintiff has a complete and present cause of action, that is, when the plaintiff can file suit and obtain relief." *Wallace v. Kato*, 549 U.S. 384, 388 (2007); *White v. Hiers*, 652 F. App'x 784, 786 (11th Cir. 2016). Because false arrest "is a species" of false imprisonment and thus the two claims overlap, in order to determine when the limitation period began, the Court must ascertain when the false imprisonment came to an end, *i.e.,* when legal process was initiated against him – "when, for example, he is bound over by a magistrate or arraigned on charges." *Kato*, 549 U.S. at 389; *Hiers*, 652 F. App'x at 786; *Burgest v. McAfee*, 264 F. App'x 850, 852 (11th Cir. 2008).[4]

Here, assuming for the sake of argument that Plaintiff was arrested and booked into the Fulton County Jail without a warrant and/or probable cause,[5] that alleged false arrest and imprisonment occurred on November 9, 2012. (Doc. 4, Attach. 1 at 3). The Court takes judicial notice of the fact that Plaintiff was bound over by a magistrate judge and indicted on November 16, 2012, and was arraigned

[4] Because of the overlap between the false arrest and false imprisonment claims, the Supreme Court in *Kato* referred to both as false imprisonment, whereas the the Eleventh Circuit in *Hiers* merely used the terms interchangeably.

[5] The undersigned notes, however, that Plaintiff's exhibits indicate that there was, in fact, a warrant for Plaintiff's arrest and, also contrary to his allegations, he was indicted and arraigned. (*See* Doc. 4, Attach. 2 at 18-23).

on December 18, 2012. *See Fulton County Superior Court Records*, available at http://justice.fultoncountyga.gov/PASupCrtCM/CaseDetail.aspx?CaseID=540284 and http://justice.fultoncountyga.gov/PASupCrtCM/CaseDetail.aspx?CaseID=549957 (last reviewed on March 2, 2017).[6] Even using the latest date – *i.e.*, the date that Plaintiff was arraigned, the limitations period would have begun to run on December 18, 2012. Plaintiff's false arrest and false imprisonment claims, filed nearly four years later on December 7, 2016, are time-barred and should be dismissed.

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[6] This Court can take judicial notice of the Fulton County Superior Court's records pertaining to Plaintiff's case. *See Redner v. Citrus Cnty., Fla.*, 919 F.2d 646, 657 n.14 (11th Cir. 1990) (stating that a court may take judicial notice of a state court proceeding); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("We note that the most frequent use of judicial notice of ascertainable facts is in noticing the content of court records.") (internal quotations and citations omitted); *Davis v. Richland Cnty.*, No. 4:12-CV-3429-RMG-TER, 2013 WL 5797739, at *2 n.1 (D. S.C. Oct. 24, 2013) (taking judicial notice of state court records concerning the plaintiff's arrest and indictment, which were maintained by the state court). *See also Odion v. Google Inc.*, 628 F. App'x 635, 638 (11th Cir. 2015) (noting that the district court could have taken judicial notice of state court records).

E. Plaintiff Has Not Alleged Sufficient Facts To Proceed On His Malicious Prosecution Claim.

Unlike false arrest and false imprisonment, a claim for malicious prosecution accrues when the prosecution terminates in the plaintiff's favor. *Burgest*, 264 F. App'x at 852-53 (holding that the plaintiff's malicious prosecution claim accrued when he was acquitted by a jury); *Uboh v. Reno*, 141 F.3d 1000, 1006 (11th Cir. 1998) (holding the plaintiff's malicious prosecution claim accrued the date his charges were dismissed). Plaintiff's charges were nolle prossed, or dismissed, on March 15, 2015. Thus, his malicious prosecution claim, filed on December 7, 2016, was well within the two-year statute of limitations.

In order to state a constitutional claim for malicious prosecution under § 1983, a plaintiff must allege "(1) a judicial proceedings [sic] commenced against the present plaintiff by the present defendant; (2) malice and a lack of probable cause for the judicial proceeding; (3) the termination of the judicial proceeding in favor of the present plaintiff; [and] (4) damage suffered by the present plaintiff as a result of the judicial proceeding." *Chaney v. City of Orlando, Fl.*, 291 F. App'x 238, 242 (11th Cir. 2008). *See also Black v. Wigington*, 811 F.3d 1259, 1266 (11th Cir. 2016). Other than conclusory statements that the officers lacked probable

cause, Plaintiff has failed to allege any facts that would support his conclusory claim, *i.e.,* that any of the APD officers, the crime technician, and/or the unknown Sergeant who approved Plaintiff's arrest acted without probable cause; nor has Plaintiff alleged any facts that would demonstrate that any of these Defendants acted with malice. Plaintiff, therefore, has failed to state a claim for malicious prosecution against the remaining Defendants. *See, e.g., Welton v. Anderson*, 770 F.3d 670, 674 (7th Cir. 2014) (affirming district court's dismissal of malicious prosecution claim where the plaintiff merely contended that the officer "intentionally" presented false facts and offered no facts purporting to show malice, because "[s]uch conclusory allegations, without more, are insufficient to state a claim."); *Huffer v. Bogen*, 503 F. App'x 455, (6th Cir. 2012) (affirming dismissal of malicious prosecution claim because the plaintiff claimed in a conclusory manner that the defendants initiated charges against him "without probable cause" and "maliciously"); *Erikson v. Pawnee Cnty. Bd. of Cnty. Comm'rs*, 263 F.3d 1151, 1154 (10th Cir. 2001) (affirming district court's dismissal of malicious prosecution claim where the plaintiff alleged in a conclusory manner that no probable cause existed and did not allege any specific facts to support the lack of probable cause).

III. Conclusion

For the foregoing reasons,

IT IS RECOMMENDED this action be **DISMISSED WITHOUT PREJUDICE** under 28 U.S.C. § 1915(e)(2).

The Clerk is **DIRECTED** to terminate the referral to the undersigned Magistrate Judge.

IT IS SO RECOMMENDED AND ORDERED this 21st day of March, 2017.

JUSTIN S. ANAND
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

STEPHENSON LAMAR SMITH,	:	
Plaintiff,	:	PRISONER CIVIL RIGHTS
	:	42 U.S.C. § 1983
v.	:	
	:	
TED JACKSON; et al.,	:	CIVIL ACTION NO.
Defendants.	:	1:16-CV-4519-RWS

ORDER

This Court adopted the Magistrate Judge's Report and Recommendation and dismissed Plaintiff's complaint for his failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2). (Doc. 10). The Eleventh Circuit later dismissed Plaintiff's appeal. (Doc. 18). Over one year after this action was originally dismissed, Plaintiff filed a "Motion to Re-open the Case." (Doc. 19). Because Plaintiff's motion did nothing to cure the deficiencies in his complaint identified by the Magistrate Judge and adopted by this Court, this Court denied the motion. (Doc. 20).

Plaintiff has now filed a notice of appeal thereof, and asks this Court to appoint him counsel. (Docs. 21, 22). This case is closed and Plaintiff has not provided any reason for the Court to reconsider its decision. Plaintiff's motion for

appointment of counsel [Doc. 22] is **DENIED**. Any further motions for counsel should be directed to the Eleventh Circuit.

IT IS SO ORDERED, this 13th day of September, 2018.

RICHARD W. STORY
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-13867-E

STEPHENSON LAMAR SMITH,

Plaintiff - Appellant,

versus

TED JACKSON,
ERIC HENRY,
S. STEWARD,
R. DANIELS,
D. ACEVEDO, et al.,

Defendants - Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Stephenson Lamar Smith has failed to pay the filing and docketing fees to the district court within the time fixed by the rules., effective April 08, 2019.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Gloria M. Powell, E, Deputy Clerk

FOR THE COURT - BY DIRECTION