APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[filed Nov. 17, 2021]

No. 20-30048

DARVIN CASTRO SANTOS,

Plaintiff-Appellant,

versus

CRAIG WHITE, *Major*; JOHN WELLS, *Captain*; ALLEN VERRET, *Colonel*; ASHLEY MARTELL, *Lieutenant*,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
No. 3:16-CV-598

Before SMITH, STEWART, and WILLETT, *Circuit Judges*.

JERRY E. SMITH, *Circuit Judge*:

Darvin Santos, an inmate at the Elayn Hunt Correctional Center in Louisiana, sued prison officials under 42 U.S.C. § 1983, asserting that they had used excessive force against him in violation of his constitutional rights. The district court granted summary judgment for the defendants, deter-mining that Santos's claims were barred by *Heck v. Humphrey,* 512 U.S. 477 (1994). In doing so, the court relied on prison disciplinary reports that contradicted Santos's allegations.

Santos appeals both the district court's determination based on *Heck* and its consideration of the disciplinary reports, which he claims are hearsay. For the reasons given below, we affirm the district court's decision to admit the reports but vacate and remand for further proceedings with regard to the application of *Heck*.

I.

Santos was walking to his cell when, he alleges, he witnessed six prison officers beating another inmate. Santos intervened, imploring the officers to stop the beating. The officers, including Colonel Allen Verret, Major Craig White, and Lieutenant Ashley Martell, told him to mind his business before ultimately turning their attention to him as the focus of their beating. He claims that he was knocked to the ground, hit, kicked, choked, handcuffed and dragged in a manner that caused his head to hit poles in the walkway. He was then placed in a shower cell, where Captain John Wells sprayed him in the face with a chemical agent, ordered him to strip naked, and sprayed him again with the chemical agent in the genitals and anus. After prohibiting Santos from taking a shower to wash off the chemical, the officers ordered him to put on his jumpsuit and escorted him to another area, where Wells cut Santos with a knife and threatened to kill him. Santos was ultimately transferred to a medical center where, he alleges, he was denied any real medical attention.

This version of events is contradicted by the findings of prison officials who investigated. According to their narrative, Santos approached the officers in a threatening manner and then physically attacked them. Despite initially being restrained, he remained

uncooperative and violent, at one point striking Wells hard enough to break his dentures. His actions necessitated the use of a chemical agent to gain compliance, though after it was used he ceased resisting. Based on the incident, a prison disciplinary board concluded that Santos was guilty of nine violations: three "Defiance" violations, four "Aggravated Disobedience" violations, one "Property Destruction" violation, and one "Unauthorized Area" violation. He was disciplined accordingly, including by the forfeiture of 180 days of good-time credit.

II.

Having exhausted his administrative remedies within the prison system, Santos sued White, Wells, Verret, and Martell under § 1983, claiming that they had subjected him to corporal punishment and excessive force while seizing and detaining him, thus violating his Fourth, Eighth, and Fourteenth Amendment rights. He sought money damages.

The defendants moved for summary judgment, averring that the incompatibility between Santos's claims and the findings of the disciplinary board meant that the suit was barred by *Heck*. Santos opposed the motion and moved to strike the investigative and disciplinary reports as hearsay.

Granting summary judgment for the defendants, the court first concluded that, because Santos's disciplinary violations resulted in the loss of good-time credits, those findings were "convictions" for purposes of the *Heck* bar. It considered the contradictions between Santos's allegations and the reports that had accompanied his disciplinary sanctions and concluded that a ruling in Santos's favor "would directly challenge the validity of his convictions." *Heck* thus

barred the consideration of Santos's claims in a § 1983 suit.

The district court also denied Santos's motion to strike the prison officers' reports. The court reasoned that those reports were not offered for the truth of their contents but rather to provide a record of the disciplinary board's findings.

III.

On appeal, Santos challenges the summary judgment with regard to his Eighth Amendment claims. He contends that his claims are not barred by *Heck* and that the court erred by not excluding the prison disciplinary reports as hearsay. Summary judgment is a determination of law that we review *de novo*. *Austin v. Kroger Tex., L.P.*, 864 F.3d 326, 328 (5th Cir. 2017) (per curiam). In doing so, we view all facts in the light most favorable to the non-moving party, here Santos, and draw all reasonable inferences in his favor. *Coleman v. Hous. Indep. Sch. Dist.*, 113 F.3d 528, 533 (5th Cir. 1997). We conclude that the district court was correct in its decision to consider the disciplinary reports, but we vacate and remand its determination that Santos's claims were *Heck*-barred.

IV.

The application of *Heck* to § 1983 claims by prisoners is a subject that we examine today in No. 20-30218, *Gray v. White*, and a fuller discussion can be found in Part IV of that opinion. Here, we only briefly summarize the governing law before applying it to Santos's claims.

Section 1983 creates a cause of action against individuals who, under color of state law, deprive the

plaintiff of his constitutional rights. To decide an Eighth Amendment claim based on excessive force, a court must deter-mine "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Hudson v. McMillan*, 503 U.S. 1, 7 (1992). But under *Heck*, a prisoner may not "seek[] dam-ages in a § 1983 suit" if "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." *Heck*, 512 U.S. at 487. The fundamental rationale behind the *Heck* bar is that "[c]hallenges to the *validity* of any confinement or to particulars affecting its *duration* are the province of habeas corpus," whereas "requests for relief turning on *circum-stances of confinement* may be presented in a § 1983 action." *Muhammad v. Close*, 540 U.S. 749, 750 (2004) (per curiam) (emphasis added).

Because *Heck* applies to the duration of confinement, it applies not just to criminal convictions but also to prison disciplinary rulings that "result[] in a change to the prisoner's sentence, including the loss of good-time credits." *Clarke v. Stalder*, 154 F.3d 186, 189 (5th Cir. 1998) (en banc). *Heck* therefore bars claims that would, if accepted, "negate" a prison disciplinary finding that had resulted in the loss of good-time credits. *Bourne v. Gunnels*, 921 F.3d 484, 491 (5th Cir. 2019).

Meanwhile, *Heck* is not "implicated by a prisoner's challenge that threatens no consequence for his conviction or the duration of his sentence." *Muhammad*, 540 U.S. at 751. Rather, a claim is barred only if granting it "requires negation of an element of the criminal offense or proof of a fact that is inherently inconsistent with one underlying the criminal conviction." *Bush v. Strain*, 513 F.3d 492, 497 (5th Cir.

2008). The resulting inquiry is "fact-intensive" and dependent on the precise nature of the disciplinary offense. *Aucoin v. Cupil*, 958 F.3d 379, 382 (5th Cir.) (quoting *Bush*, 513 F.3d at 497), *cert. denied*, 141 S. Ct. 567 (2020).

It is unclear, from the record, whether any of Santos's claims are barred by *Heck*. In his disciplinary proceeding, Santos was found guilty of nine rules violations: three "Defiance" violations, four "Aggravated Dis-obedience" violations, one "Property Destruction" violation, and one "Un-authorized Area" violation. Though the disciplinary reports list factual findings, the elements required to find a prisoner guilty of those violations do not appear anywhere in the record. It is thus impossible to determine which facts were *necessary* to the disciplinary board's conclusions. It may be that the elements of, for instance, aggravated disobedience would be logically incompatible with some of Santos's claims of excessive force, but the record does not currently permit that inference.

Furthermore, not all of the disciplinary board's findings implicate *Heck*. The board imposed a forfeiture of 180 days of good time for one count each of aggravated disobedience, defiance, and property destruction, all arising from Santos's assault on Wells in the Fox-6 D-Tier area of the prison; his other violations, including all of those in the shower, resulted in sanctions such as loss of canteen and phone privileges. Disciplinary sanctions of that type bear on the "circumstances of confinement," rather than on that confinement's "validity" or "duration," and are thus not barred by *Heck*. *Muhammad*, 540 U.S. at 750. Moreover, the disciplinary board imposed no sanctions at all on Santos for actions after the admin-

istration of the chemical agent in the shower, and it noted that he "complied with orders" after that point. Thus, *Heck* does not bar Santos's claims from that point onward.

It is not sufficient to deem Santos's claims to be "intertwined" with his loss of good-time credits. Rather, in applying *Heck*, a court must bar only those claims that are "necessarily at odds with" the disciplinary rulings, and only with those rulings that resulted in the loss of good time credits. *Aucoin*, 958 F.3d at 383. The defendants have thus not met their burden for summary judgment on the current record. Whether the board's findings related to the assault on Wells bar the corresponding claims by Santos must be determined by a fact-specific analysis informed by the elements necessary to establish those violations.

V.

Santos also appeals the ruling on the defendants' exhibits, contending that they were inadmissible hearsay. To be considered on summary judgment, materials must be of a type that can be "presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2); *see also LSR Consulting, LLC v. Wells Fargo Bank, N.A.*, 835 F.3d 530, 534 (5th Cir. 2016). Evidentiary rulings by trial courts are affirmed unless they constitute abuses of discretion. *See, e.g.*, *United States v. Pruett*, 681 F.3d 232, 243 (5th Cir. 2012) (per curiam).

A statement is hearsay if it is not made while testifying and a party "offer[s it] in evidence to prove the truth of the matter asserted" in the statement. Fed. R. Evid. 801(c). The reports submitted by the defendants were offered to demonstrate that the dis-

ciplinary board had found Santos guilty of various offenses, not to prove the truth of the matter, that is, that he actually had committed the offenses. As with criminal convictions, the *Heck* bar does not, in theory, assume that the prison disciplinary board's determin-ations were true, but only that they cannot be challenged through § 1983. *Cf. Heck*, 512 U.S. at 487 (noting that § 1983 may be used to challenge a conviction or sentence that "has already been invalidated"). The district court did not err in considering the exhibits.

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In sum, although the district court was correct in considering the doc-uments, Santos's claims cannot be dismissed as *Heck*-barred without further development of the record to determine which of his allegations would be necessarily incompatible with the prison board's ruling that deprived him of good time credits. In light of these conclusions, the summary judgment is VACATED and REMANDED. We place no limitation on the matters that the court can address and decide on remand. Nor do we suggest how the court should rule on which claims are precluded by *Heck*.

DON R. WILLETT, *Circuit Judge*, concurring in the judgment.

This case involves an all-too-common set of facts: Appellant (a prisoner) claims that Appellees (prison officers) spontaneously and unlawfully abused him. Appellees, on the other hand, insist they used lawful force to control Appellant's misbehavior. Though the majority opinion reaches the correct conclusion—the

district court erred in its unqualified dismissal under *Heck*—I write to emphasize two points of departure.

I

First, my colleagues punt on *Heck* when a hand-off is warranted. Could the record have more information? Absolutely. Do we *need* more? No. *Heck* does not categorically compel an element-by-element inquiry, and the majority opinion needlessly complicates things by concluding that the record precludes analysis.

This case is *Aucoin* redux.[1] Appellant maintains he was subject to unprovoked, unlawful violence at every stage of the encounter.[2] But if true, he "cannot be guilty of [the offenses for which he lost good-time credit]—in direct conflict with his disciplinary conviction."[3] So we need not dwell on the component elements of Appellant's conviction to determine that most of his claims are incompatible with the disciplinary board's findings.

Take the claims arising from the pre-shower salvo. The majority implies that some of these claims may not be *Heck* barred.[4] Sure, *Heck* is not "implicated by a prisoner's challenge that threatens no consequence for . . . the duration of his sentence."[5]

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[1] *See Aucoin v. Cupil*, 958 F.3d 379 (5th Cir. 2020).

[2] *Cf. id.* at 383 (noting plaintiff-appellant "challenge[d] the conviction by maintaining his innocence in the events that led up to his disciplinary conviction").

[3] *Id.*

[4] *Ante* at 5–6.

[5] *Muhammad v. Close*, 540 U.S. 749, 750–51 (2004) (per curiam) (observing that punishments of this type bear on the "circumstances of confinement" rather than its "validity" or "duration");

But all of Appellant's pre-shower claims turn on the same narrative: He was attacked without provocation. This is fundamentally inconsistent with the officers' account, which prompted Appellant's loss of good-time credit for property destruction, aggravated disobedience, and defiance. Most of Appellant's suit thereby "challenges the factual determination that underlies his conviction[s],"[6] meaning most of his claims fail.

But most does not mean all. A portion of Appellant's suit alleged violence unrelated to any supposed need to gain control. Appellant pleaded an excessive-force claim against Captain Wells for ordering him to "spread his butt cheeks" and spraying him "in the anus with pe[p]per spray." Appellant also pleaded that Captain Wells threatened and cut him with a knife after he was "no longer resisting or attempting to flee or, otherwise, commit any crime." These are not trivial details. Neither the incident report nor any other summary-judgment evidence provides an iota of justification for this alleged force. We are thus left with no circumstance where these claims, if proven true, would conflict with Appellant's disciplinary conviction—let alone those portions that impacted the duration of his confinement.[7] This is not to say that the elements underlying an administra-

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see also, e.g., *Bourne v. Gunnels*, 921 F.3d 484, 491 (5th Cir. 2019).

[6] *Id.*

[7] As the majority correctly observes, Appellant was found guilty of nine prison rule violations, yet only three (property destruction, aggravated disobedience, and defiance—each arising from the initial salvo) resulted in the loss of good-time credit. *Ante* at 6.

tive offense are categorically irrelevant under *Heck*.[8] But no case, until today, suggests this information is an analytical prerequisite.[9]

I nonetheless join the judgment because, as was the case in *Aucoin*, "the district court erred in dismissing all of [Appellant's] claims under *Heck*."[10]

II

I must also depart from the majority opinion's hearsay analysis, though my colleagues again reach the correct conclusion. No one seriously disputes that "[t]he reports . . . were offered to demonstrate that the disciplinary board had found Santos guilty of various offenses, not to prove . . . that he actually had committed the offenses."[11] But this does little more than invite the question presented: Why is this not hearsay?

A prison disciplinary report is an out-of-court statement,[12] and the report here was offered by the Appellees "to provide a record of Plaintiff's prison

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[8] *See, e.g.*, *Ballard v. Burton*, 444 F.3d 391, 397–99 (5th Cir. 2006) (analyzing elements to determine whether the plaintiff's prior conviction was fundamentally inconsistent with his claim of excessive force).

[9] The majority's belief otherwise casts a jaundiced eye on *Aucoin*, which was decided just last year and offered nary a mention of the elements underlying the administrative offenses at issue there. *See Aucoin*, 958 F.3d at 383–84. But our silence was understandable: The appellant claimed total innocence, which was "necessarily inconsistent with the validity of the [administrative] conviction." *Id.* at 383.

[10] *Id.* at 383–84.

[11] *Ante* at 7.

[12] *See* FED. R. EVID. 801(a) (defining "statement"); *cf., e.g.*, *United States v. Jimenez*, 275 F. App'x 433, 437 n.1 (5th Cir. 2008) ("Police reports are generally excludable as hearsay.").

disciplinary convictions" and thus "establish . . . that the *Heck* doctrine bars [relief]." This, at bottom, points to the truth of the matter asserted in the disciplinary report: Appellant was found guilty of (and punished for) his administrative offenses. Needless to say, the disciplinary report would be irrelevant if it did not accurately communicate the board's findings. The majority opinion nonetheless suggests that there is only one way to offer these statements for their truth: by claiming Appellant *actually committed* the offenses. I disagree. The truth asserted here is that Appellant was found guilty and lost good-time credit—not whether this outcome was justified.

But we mustn't lose the forest for the trees. In the end, the majority opinion correctly observes that evidence need not be in admissible form at summary judgment.[13] I would thus hold that the defendants could have later admitted the challenged evidence under any number of theories.[14] This low bar does not compel reversal.

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It is believed that Solon, one of the Seven Sages of Greece, once observed that justice would not come to Athens until the unaggrieved were as indignant as the oppressed. Whether this case merits indignance

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[13] *See, e.g.*, *LSR Consulting, LLC v. Wells Fargo Bank, N.A.*, 835 F.3d 530, 534 (5th Cir. 2016); *accord* FED. R. CIV. P. 56(c)(2).

[14] *Cf., e.g.*, *Autin v. La. Dep't of Public Safety Corr.*, No. 20-CV-1214, 1210471, at *5 (E.D. La. Mar. 31, 2021) (*Heck*-bar case, admitting disciplinary reports as public records); *Aucoin v. Cupil*, No. 16-00373-BAJ-RLB, 2018 WL 6332831, at *1 n.2 (M.D. La. Dec. 4, 2018) (*Heck*-bar case, judicial notice of disciplinary convictions), *rev'd and remanded on other grounds*, 958 F.3d 379 (5th Cir. 2020).

is not before us.[15] But we are called to determine whether Appellant's claim is beyond the reach of § 1983. It is not. Appellant has the right to present his case to a jury, and the district court's belief otherwise was error.

[15] If faced with this question, perhaps we might pause to note Captain Wells's apparent familiarity with the impact of *Heck* on civil rights claims. *See, e.g.*, *Jacobs v. Wells*, 16-CV-00865-BAJ-EWD, 2019 WL 4170185, at *1 (M.D. La. Sept. 3, 2019) (granting *Heck* dismissal, § 1983 claim against Captain Wells for unlawful use of chemical agents and force resulting in a broken ankle and leg); *Johnson v. Sharp*, No. 05-1244-A, 2007 WL 580667, at *2 (M.D. La. Feb. 13, 2007) (granting *Heck* dismissal, § 1983 claim against then-Sergeant Wells for an unprovoked, "vicious beating"); *see also, e.g.*, *Gray v. White*, ___ F.4th ___ (5th Cir. 2021) (involving Captain Wells, again).

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[filed Jan. 3, 2022]

No. 20-30048

DARVIN CASTRO SANTOS,

Plaintiff-Appellant,

versus

CRAIG WHITE, *Major*; JOHN WELLS, *Captain*; ALLEN VERRET, *Colonel*; ASHLEY MARTELL, *Lieutenant*,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
No. 3:16-CV-598

ON PETITION FOR REHEARING EN BANC

Before SMITH, STEWART, and WILLETT, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5th CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

[filed Jan. 7, 2020]

DARVIN CASTRO SANTOS CIVIL ACTION
VERSUS
CRAIG WHITE, ET AL. NO.: 16-00598-BAJ-EWD

RULING AND ORDER

Before the Court are Defendants Craig White, John Wells, Alien Verret, and Ashley Martell's **Motion for Summary Judgment (Doc. 70)**. For the reasons that follow, Defendants' Motion is **GRANTED**.

I. BACKGROUND

A. Prison Altercation

This matter arises from allegations of excessive force at a correctional facility. Plaintiff is a prisoner currently incarcerated in the Louisiana State Penitentiary but was incarcerated at Elayn Hunt Correctional Center in St. Gabriel, Louisiana at the time of the event on which this suit is based. On January 28, 2016, around 4:30 p.m., Plaintiff alleges that he was walking into his dorm when he witnessed six correctional officers beating an inmate named Charlie Morris. (Doc. 1 at p. 4). Plaintiff alleges that he pleaded with officers to stop hitting Morris. Plaintiff alleges that the officers told him, shut up, this is not your business. Plaintiff alleges that these same officers then jumped on him and began to hit and kick him, knocking Plaintiff to the ground. Plaintiff claims that he was forcefully and tightly handcuffed and thrown on an empty metal bed. (Id.).

Plaintiff further claims that Colonel Alien Verret ("Col. Verret") then grabbed him by the throat and choked him while Captain Billy Verret ("Capt. Verret"), Lieutenant Jarrod Verret ("Lt. Verret"), Major Craig White ("Major White"), and Captain John Wells (Capt. Wells) struck his face and body with their fists and radios. (Id.). Plaintiff alleges that the officers dragged him from his dorm to another unit while continuously beating him and causing his head to hit the poles in the walkway. (Id.). Upon arrival to the unit, the officers allegedly threw Plaintiff to the ground and continued to beat him.

Plaintiff alleges that was he was placed in a shower cell alone for an extended period of time. Plaintiff claims he sustained cuts from the beating and that his hands were swollen from the lightness of the handcuffs (Id. at p. 5). Plaintiff alleges that Capt. Wells eventually came to the cell with Sergeant Justin Washington and ordered him to approach the bars of the cell door to remove his handcuffs. Plaintiff claims that when he approached the bars of the cell door, Capt. Wells sprayed him in the face with a chemical agent and made racially charged statements. (Id.). Soon thereafter, Plaintiff's handcuffs were removed, and Plaintiff claims he was ordered to remove his clothing. Plaintiff alleges that Capt. Wells then sprayed the chemical agent on his genitals and anus. (Id. at p. 6). When Plaintiff turned on the shower to wash away the chemical agent, he claims he was ordered by Capt. Wells to turn off the shower and put on a jumpsuit. Capt. Wells then allegedly escorted him from the shower cell to another area where Capt. Wells retrieved a folded knife, which Plaintiff alleges was about 5 inches long. (Id. at p. 7). Plaintiff claims

that Capt. Wells cut him and threatened to kill him with the knife.

B. Plaintiff's Alleged Injuries from the Incident

Plaintiff was later transported to a diagnostic center where he was cleaned up. Plaintiff alleges that the Emergency Medical Technicians refused to stitch his hand and face to conceal the fact that he was beaten. (Id. at p. 8). Plaintiff asserts that the medical technicians refused to give him medicine for his pain. Plaintiff further asserts that he was kept in isolation for three to four days while his repeated requests for medical attention for his wounds were ignored. Plaintiff alleges that he was never allowed to see a doctor during his time at the diagnostic center. (Id.).

Plaintiff further alleges that he suffered acute injury and multiple serious and prolonged injuries including, but not limited to, his anus, arm, back, chest, face, genitals, hands, shoulder, and ribs. (Id. at p. 11). Plaintiff further alleges that he suffered scarring on his legs and arms from the leg irons and handcuffs and has difficulty with sight since the incident. Plaintiff further claims that he has blood clots in both eyes, on the back of his legs, on his face, and suffers from discomfort, humiliation, burning in his respiratory system, mental and emotional injury, medical expenses, and lost wages. (Id.).

C. Prison Disciplinary Proceeding

As a result of the altercation, Plaintiff was issued several disciplinary reports for violations such as "aggravated disobedience", "defiance", "property

destruction", entrance into an unauthorized area."[1] On February 1, 2016, the prison disciplinary board found Plaintiff guilty on nine rule violations. Plaintiff received a combined sentence of isolation for a period of twenty days and the forfeiture of 180 days of good time. Plaintiff also received the loss of canteen privileges for a period of eighteen weeks and thirty weeks loss of phone restrictions.[2]

D. Procedural History

On September 10, 2016, Plaintiff filed a lawsuit under 42 U.S.C. §1983 (Doc. 1), alleging unreasonable use of excessive force. Plaintiff later amended his Complaint (Doc. 45) to add Sgt. Washington as a defendant. Defendants responded with an Answer (Doc. 20), denying all allegations. On August 14, 2018, Plaintiff filed a Motion to Dismiss (Doc. 63) to dismiss Defendants Sgt. Washington, Lt. Verret, and Lt. Troy Rogers, which the Court granted. (Doc. 69). Plaintiff filed his Second Amended Complaint (Doc. 66) on September 17, 2018, adding Lieutenant Ashley Martell as a defendant. On July 22, 2019, Defendants filed this Motion for Summary Judgment, asserting that Plaintiffs §1983 action is barred by the *Heck* doctrine.

II. LEGAL STANDARD

Pursuant to Rule 56, "[t]he [C]ourt shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In determining whether the movant is entitled to summary judgment, the Court views the facts in the light most favorable to the non-movant

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[1] Doc. 71.

[2] Id.

and draws all reasonable inferences in the non-movant's favor. *Coleman v. Houston Independent School Dist*, 113 F.3d 528, 533 (5th Cir. 1997).

After a proper motion for summary judgment is made, the non-movant must set forth specific facts showing there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 250 (1986). At this stage, the Court does not evaluate the credibility of witnesses, weigh the evidence, or resolve factual disputes. *Int'l Shortstop, Inc. v. Rally's, Inc.,* 939 F.2d 1257, 1263 (5th Cir. 1991), cert. denied, 502 U.S. 1059 (1992). However, if the evidence in the record is such that a reasonable jury, drawing all inferences in favor of the non-moving party, could arrive at a verdict in that party's favor, the motion for summary judgment must be denied. *Int'l Shortstop, Inc.*, 939 F.2d at 1263.

On the other hand, the non-movant's burden is not satisfied by some metaphysical doubt as to the material facts, or by conclusory allegations, unsubstantiated assertions, or a mere scintilla of evidence. *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994). Summary judgment is appropriate if the non-movant "fails to make a showing sufficient to establish the existence of an element essential to that party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). In other words, summary judgment will be appropriate only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law." *Sherman v. Hallbauer*, 455 F.2d 1236, 1241 (5th Cir. 1972).

III. DISCUSSION

Federal law provides a cause of action against "every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State..., subjects, or causes to be subjected, any citizen... to the deprivation of any rights, privileges or immunities secured by the Constitution and laws..." 42 U.S.C. §1983. To state a claim under §1983, a plaintiff must: (1) allege a violation of a right secured by the Constitution or laws of the United States, and (2) show that the deprivation was committed by a person acting under color of state law. *Southwestern Bell Telephone, LP v. City of Houston*, 529 F.3d 257, 260 (5th Cir. 2008). Although §1983 actions are potent proceedings designed to vindicate deprived rights, they are often vulnerable to dismissal under *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364 (1994), otherwise known as the Heck doctrine.

A. *Heck v. Humphrey*

Defendants contend that the success of Plaintiff's claims would necessarily implicate the validity of the prison disciplinary proceedings in which Plaintiff was found guilty of multiple violations. Under *Heck*, a §1983 claim must be dismissed if the adjudication of the claim would imply the invalidity of a plaintiff's prior criminal convictions or sentence. *Heck*, 512 U.S. at 486-87. In the summary judgment analysis, the presence of a genuine issue of material fact in the basis for the conviction does not preclude the application of *Heck*. The *Heck* doctrine rests on the "principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments. *Id.* However, the constitutional violation claim will not be barred if the factual basis for the conviction

is temporally and conceptually distinct from the excessive force claim." *Bush v. Strain*, 513 F.3d 492, 498 (5th Cir. 2008).

The *Heck* doctrine also applies to prison disciplinary proceedings. A conviction, for purposes of *Heck*, includes a ruling in a prison disciplinary proceeding that results in a change to the prisoner's sentence, including the loss of good-time credits. *Heck*, 512 U.S, at 189. The conviction, in the prison disciplinary sense, is the finding of guilt on the disciplinary charge, and if success of the plaintiff's §1983 claim necessarily would imply the invalidity of that finding, then *Heck* bars the claim until such time as its requirements are satisfied. *Id.* (citing *Stone-Bey v. Barnes*, 120 F.3d 718, 721 (7th Cir. 1997)). The disciplinary ruling must first be reversed, expunged, or otherwise declared invalid.

Plaintiff was found guilty on multiple disciplinary reports. These violations included: (1) refusing direct verbal orders of several corrections officers for Plaintiff to comply after being restrained; (2) striking Capt. Wells in his eyes, nose, and mouth; (3) severely damaging Capt. Wells dentures; (4) refusing to obey direct verbal orders to approach the bars to allow Capt. Wells to remove his restraints; (5) threatening to kill corrections officers; (6) kicking and spitting in Lt Ashley Martell's face; (7) failing to comply with Major White's orders to exit the tier; and (8) refusing direct verbal orders which necessitated Capt. Wells' use of chemical agent to gain Plaintiff's compliance. (Doc. 70-1 at p. 7).[3]

After a review of Plaintiff's disciplinary proceeding record, the Court finds that a favorable verdict on

[3] See Doc. 71, Exhibits 2, and 3, and 4.

Plaintiff's excessive force claim would undermine his convictions. The facts of Plaintiff's excessive force allegation are the same as the basis for his convictions; therefore, the facts do not differ temporally and conceptually in a manner that permits the claim to proceed. If the Court were to rule in favor of Plaintiff on these facts, it would directly challenge the validity of his convictions. Plaintiff must first have his convictions reversed, expunged, or invalidated before bringing an §1983 action on this set of facts. The Court also finds that Plaintiff has not provided any evidence that the convictions from his disciplinary proceeding have been reversed, expunged, or declared invalid. Thus, the Court finds that Plaintiff's claims against Defendants are barred pursuant to the *Heck* doctrine.

B. Claim for Relief Costs and Attorney's Fees

Plaintiff seeks attorney's fees and costs pursuant to 42 U.S.C. §1988 and punitive damages under §1983. Under §1988, the Court, in its discretion, may allow the prevailing party a reasonable attorneys fee as part of the costs. The Court declines to exercise its discretion to award attorney's fees, costs, and punitive damages to Plaintiff, as he is not the prevailing party in this matter.

IV. CONCLUSION

Accordingly,

IT IS ORDERED that the **Motion for Summary Judgment (Doc. 70),** is **GRANTED.**

IT IS FURTHER ORDERED that Plaintiffs claims against the remaining Defendants are **DISMISSED**.

Baton Rouge, Louisiana, this 7th day of January, 2020.

/s/ Brian A. Jackson
JUDGE BRIAN A. JACKSON
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA