

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 21-6873**

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**TERRON GERHARD DIZZLEY.**

Plaintiff - Appellant,

v.

**MELVIN GARRETT, Investigator, Georgetown County.**

Defendant - Appellee.

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Appeal from the United States District Court for the District of South Carolina, at  
Charleston. R. Bryan Harwell, Chief District Judge. (2:19-cv-00530-RBH)

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Submitted: January 31, 2022

Decided: February 2, 2022

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Before WILKINSON and KING, Circuit Judges, and SHEDD, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Terron Gerhard Dizzley, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

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**APPENDIX A**

PER CURIAM:

Terron Gerhard Dizzley appeals the district court's order accepting the recommendation of the magistrate judge and dismissing his 42 U.S.C. § 1983 action as time-barred. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court and deny Dizzley's motion for this court to take original jurisdiction. *Dizzley v. Garrett*, No. 2:19-cv-00530-RBH (D.S.C. May 18, 2021). 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.

*AFFIRMED*

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FOR THE FOURTH CIRCUIT

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O R D E R

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The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge King, and Judge Heytens.

For the Court

/s/ Patricia S. Connor, Clerk

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APPENDIX B

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

|   |   |                                  |
|---|---|----------------------------------|
| Terron Gerhard Dizzley,                 | ) | C/A No. 2:19-cv-00530-RBH-JDA    |
|   | ) |                                  |
| Plaintiff,                              | ) |                                  |
|   | ) |                                  |
| v.                                      | ) |                                  |
|   | ) | <b>REPORT AND RECOMMENDATION</b> |
| Melvin Garrett,                         | ) |                                  |
| <i>Investigator, Georgetown County,</i> | ) |                                  |
|   | ) |                                  |
| Defendant.                              | ) |                                  |
|   | ) |                                  |

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Terron Gerhard Dizzley ("Plaintiff"), proceeding pro se, brings this civil action pursuant to 42 U.S.C. § 1983, alleging violations of his constitutional rights. Plaintiff is an inmate in the custody of the South Carolina Department of Corrections ("SCDC") and is currently incarcerated at the Broad River Correctional Institution. Plaintiff filed this action in forma pauperis under 28 U.S.C. § 1915. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B), and Local Civil Rule 73.02(B)(2)(d), D.S.C., the undersigned is authorized to review the Amended Complaint for relief and submit findings and recommendations to the District Court. For the reasons below, the Complaint is subject to summary dismissal.

**BACKGROUND**

Plaintiff commenced this action by filing a Complaint on February 19, 2019.<sup>1</sup> On March 4, 2019, the undersigned recommended summary dismissal of this action, concluding that Plaintiff's claims were barred by *Heck v. Humphrey*, 512 U.S. 477, 481 (1994). [Doc. 9.] The Honorable R. Bryan Harwell adopted the Report and

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<sup>1</sup>A prisoner's pleading is considered filed at the moment it is delivered to prison authorities for forwarding to the court. See *Houston v. Lack*, 487 U.S. 266, 270 (1988). Accordingly, this action was filed on February 19, 2019. [Doc. 1-3 at 1 (envelope stamped as received by prison mailroom on February 19, 2019).]

Recommendation and dismissed this action without prejudice and without issuance and service of process on April 16, 2019 [Doc. 14], and denied Plaintiff's motion to alter or amend the judgment on June 4, 2019 [Doc. 18]. Thereafter, the United States Court of Appeals for the Fourth Circuit vacated the decision of the District Court and remanded the action on February 16, 2021 [Doc. 32] and entered a mandate on March 12, 2021 [Doc. 33]. As such, this action has been recommitted to the undersigned for further proceedings.

In the Complaint, Plaintiff alleges that Defendant violated his rights under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. [Doc. 1 at 4.] Plaintiff alleges Defendant was an investigator for the State of South Carolina and the Georgetown County Sheriff's Office. [*Id.*] According to Plaintiff, on December 1, 2008, Aundry Evans, Jr., was shot and later died. [Doc. 1-1 at 1.] Defendant appeared before a magistrate judge on December 11, 2008, to obtain an arrest warrant for Plaintiff for the murder of Evans. [*Id.*] Defendant violated Plaintiff's constitutional rights by giving false declarations to the magistrate judge to obtain the arrest warrant and preparing an affidavit in support of the arrest warrant that failed to establish probable cause. [*Id.*] Defendant's false statements and constitutionally deficient affidavit resulted in Plaintiff's unconstitutional arrest and the deprivation of Plaintiff's liberty and freedom. [*Id.* at 2.] No witnesses to the crime identified Plaintiff as the person who committed the crime. [*Id.*] Instead, witnesses indicated that the shooter had on a mask and could not be identified. [*Id.*] The State did not produce any physical evidence linking Plaintiff to Evans' murder. [*Id.*]

Plaintiff retained a private investigator, Benny L. Webb, to investigate the issues noted above. [*Id.*] On April 26, 2018, Webb spoke with Defendant. [*Id.*] Webb indicated

that Defendant told him that Defendant had used statements made by Naomi Alston and the victim's father, Aundry Evans, Sr., to obtain the arrest warrant. [*Id.*] Webb reported that Defendant had misrepresented the content of these individuals' statements to the magistrate judge. [*Id.*] Specifically, Defendant had falsely represented to the magistrate judge that the statements both indicated that the victim had identified Terron Dizzley as the person who had shot him when, in fact, neither statement indicated that the victim had named Dizzley as the shooter. [*Id.*] Thus, according to Plaintiff, Defendant deliberately and recklessly gave false declarations to the magistrate judge, improperly using the statements of these two individuals, to obtain an arrest warrant for Plaintiff. [*Id.*] Accordingly, Plaintiff contends, no probable cause existed to support the arrest warrant, which was based on the false statements of Evans' father and Alston, neither of whom witnessed the murder. [*Id.* at 5.]

For his injuries, Plaintiff alleges he has suffered emotional distress, depression, the loss of his liberty, property, money for bail, legal fees, and has been stabbed while in prison, none of which would have happened but for Defendant's unconstitutional actions. [Doc. 1 at 6.] For his relief, Plaintiff seeks \$5 million for actual and punitive damages. [*Id.*]

#### STANDARD OF REVIEW

Plaintiff filed this action pursuant to 28 U.S.C. § 1915, the in forma pauperis statute. This statute authorizes the District Court to dismiss a case if it is satisfied that the action "fails to state a claim on which relief may be granted," is "frivolous or malicious," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B). Further, Plaintiff is a prisoner under the definition in 28 U.S.C.

§ 1915A(c), and “seeks redress from a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). Thus, even if Plaintiff had prepaid the full filing fee, this Court would be charged with screening Plaintiff’s lawsuit to identify cognizable claims or to dismiss the Amended Complaint if (1) it is frivolous, malicious, or fails to state a claim upon which relief may be granted, or (2) seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A.

Because Plaintiff is a pro se litigant, his pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*). However, even under this less stringent standard, Plaintiff’s Complaint is subject to summary dismissal. The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which Plaintiff could prevail, it should do so, but a district court may not rewrite a petition to include claims that were never presented, *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir. 1999), or construct Plaintiff’s legal arguments for him, *Small v. Endicott*, 998 F.2d 411, 417–18 (7th Cir. 1993), or “conjure up questions never squarely presented” to the court, *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See *Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990).

### DISCUSSION

Plaintiff filed this action pursuant to 42 U.S.C. § 1983, which “is not itself a source of substantive rights,’ but merely provides ‘a method for vindicating federal rights elsewhere conferred.’” *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). A civil action under § 1983 “creates a private right of action to vindicate violations of ‘rights, privileges, or immunities secured by the Constitution and laws’ of the United States.” *Rehberg v. Paulk*, 566 U.S. 356, 361 (2012). To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

The Complaint is subject to dismissal because it is time-barred. The only claim that Plaintiff seeks to pursue in this action is a damages claim for false arrest arising out of his initial arrest pursuant to an allegedly constitutionally defective warrant. Plaintiff alleges that Defendant unlawfully obtained an arrest warrant on December 11, 2008. [Doc. 1 at 5.] Plaintiff was arrested on December 12, 2008. See Georgetown Cty. Pub. Index, <http://publicindex.sccourts.org/Georgetown/PublicIndex/PISearch.aspx> (search by case number “J525436”) (last visited Mar. 15, 2021); see also *Phillips v. Pitt Cty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (courts “may properly take judicial notice of matters of public record.”); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) (“We note that ‘the most frequent use of judicial notice is in noticing the content of court records.’”). Thereafter, Plaintiff was convicted on April 3, 2014, on charges of murder and

possession of a weapon during a violent crime and was sentenced to a term of imprisonment of thirty-five years. *Id.*

Although § 1983 provides a federal cause of action, the Court must look to the law of the State, which provides for personal-injury torts, in which the cause of action arose in determining the length of the statute of limitations. *Id.* at 387. “The applicable statute of limitations for a § 1983 claim arising in South Carolina is three years.” *Cash v. Horn*, No. 7:16-cv-3654-MGL-PJG, 2018 WL 1747945, at \*2 (D.S.C. Mar. 15, 2018), *Report and Recommendation adopted by* 2018 WL 1748289 (D.S.C. Apr. 11, 2018). “[T]he statute of limitations upon a § 1983 claim seeking damages for a false arrest in violation of the Fourth Amendment, where the arrest is followed by criminal proceedings, begins to run at the time the claimant becomes detained pursuant to legal process.” *Wallace v. Kato*, 549 U.S. 384, 397 (2007). Therefore, the statute of limitations for Plaintiff’s false arrest claim began to run on the date of his arrest, December 12, 2008, and expired three years later on December 12, 2011. Plaintiff filed the instant case on February 19, 2019, well beyond the applicable three-year statute of limitations for false arrest. Accordingly, this § 1983 action for damages is time-barred.

#### RECOMMENDATION

Based on the foregoing, it is recommended that the District Court dismiss this action without issuance and service of process. See *Neitzke v. Williams*, 490 U.S. 319, 324–25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972).

**IT IS SO RECOMMENDED.**

s/Jacquelyn D. Austin  
United States Magistrate Judge

March 16, 2021  
Greenville, South Carolina

***Plaintiff's attention is directed to the important notice on the next page.***

**Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk  
United States District Court  
300 East Washington Street, Room 239  
Greenville, South Carolina 29601

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).