[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 21-13504

Non-Argument Calendar

EDWARD TYRONE RIDLEY,

Petitioner-Appellant,

versus

WARDEN ANTOINE CALDWELL,

Respondent- Appellee.

Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 1:21-cv-00013-LAG-TQL

Before WILSON, BRASHER, and ANDERSON, Circuit Judges.

PER CURIAM:

Edward Ridley, a Georgia prisoner, appeals from the district court's *sua sponte* dismissal of his 28 U.S.C. § 2241 petition for lack of subject matter jurisdiction because Ridley did not meet Section 2241's "in custody" requirement. He argues that the district court had subject matter jurisdiction to review his challenge to a Georgia court's denial of his request to be removed from that state's sex offender registry because sex offender registration qualifies as "custody" under Section 2241. After review, we affirm.

I. BACKGROUND

Ridley was convicted of third-degree sexual battery in Florida in 1996. He contends that because his victim was a "twenty-year-old adult" the law did not require him to register as a sex offender, but that he was nevertheless placed on the Florida sex offender registry by mistake. When he later moved to Georgia, his inclusion on the Florida registry triggered a requirement under Georgia law that he register in Georgia. *See* O.C.G.A. § 42-1-19.

Ridley is currently confined at the Wilcox State Prison in Abbeville, Georgia for failing to register as a sex offender in Georgia in violation of state law. While incarcerated, Ridley filed a petition for release from Georgia's registration requirements under O.C.G.A. § 42-1-19 in state trial court. The court denied his

petition, and the Georgia Court of Appeals and Georgia Supreme Court declined to grant relief on appeal.

Ridley then filed a *pro se* petition for federal habeas corpus relief under 28 U.S.C. § 2241 challenging the denial of his state court petition. Ridley argues that his placement on the Georgia registry violates his First, Fourth, Fifth, Sixth, Eighth, Thirteenth, and Fourteenth Amendment rights. He contends that his presence on the registry has been a "chronic disability"—barring him from certain work and housing opportunities—causing him "severe mental anguish." Ridley specifically cautions that his petition does not challenge his Florida sexual battery conviction, his Georgia failure to register conviction, nor any other offense on his criminal record. Instead, he sought only to "challenge the two denials of the removal off [the] Georgia sexual offender registration."

The district court *sua sponte* dismissed the petition without directing a response from the State. It held that Ridley's presence on the registry did not render him "in custody" under Section 2241. Instead, it held that the registration requirement was merely a "collateral consequence" of his Florida sexual battery conviction. Because registration did not render Ridley "in custody," the district court concluded that it lacked subject matter jurisdiction and dismissed his habeas petition.

Ridley appealed. Because the state did not file an appellate brief, Ridley also filed a motion for "default judgment," by which he means a summary reversal.

II. STANDARD OF REVIEW

We review *de novo* a district court's finding that it lacked subject matter jurisdiction because the petitioner was not in custody when he submitted his habeas petition. *Diaz v. State of Fla. Fourth Jud. Cir. Ex rel. Duval Cnty.*, 683 F.3d 1261, 1263 (11th Cir. 2012).

III. DISCUSSION

The district court dismissed Ridley's Section 2241 petition for lack of subject matter jurisdiction, concluding that, for the purpose of seeking habeas relief, he was not in custody based on his status as a registered sex offender in Georgia. After review, we deny Ridley's motion and affirm.

A district court lacks jurisdiction to hear a habeas petition unless the petitioner is in custody when the petition is filed. *Van Zant v. Fla. Parole Comm'n*, 104 F.3d 325, 327 (11th Cir. 1997); *see also* 28 U.S.C. § 2241(c)(3). The petitioner must be "'in custody' under the conviction or sentence under attack at the time his petition is filed." *Maleng v. Cook*, 490 U.S. 488, 490–91 (1989). If a petitioner has served his sentence for an underlying conviction, "the collateral consequences of [the] conviction are not themselves sufficient to render an individual in custody." *Van Zant*, 104 F.3d at 327 (quoting *Maleng*, 490 U.S. at 492) (quotation marks omitted).

We affirm the district court for three reasons.

First, Ridley's petition is better construed as a civil rights action under 42 U.S.C. § 1983 than a petition for habeas relief. Ridley disclaims any challenge to his past convictions, including the one for which he is currently incarcerated, instead arguing that his continued presence on the Georgia registry violates his constitutional rights. An inmate would ordinarily pursue such claims by filing a civil rights suit under Section 1983—but that path is closed to Ridley because he is a "three-striker" under 28 U.S.C. § 1915(g). Because he has, on three or more previous occasions, brought actions that were dismissed because they were frivolous, malicious, or failed to state a claim, he is now prohibited from bringing another civil action without paying the filing fee. *See* 28 U.S.C. § 1915(g); *see also Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002). Were his petition styled as a Section 1983 action, it would be subject to dismissal. Instead, he attempts to avoid Section 1915(g)'s three-strike rule by styling his complaint as a habeas petition.

Second, Ridley does not mount a challenge to any prior conviction that, if successful, would invalidate his current incarceration. Ridley disclaims any challenge to his initial placement on the registry, his conviction for violating Georgia's registry requirements for which he is presently incarcerated, and his Florida conviction for which he was required to register in the first place. Instead, he challenges only the Georgia courts' denial of his request for removal from the sex offender registry. Because his petition, even if successful, would not invalidate his current incarceration,

the district court lacked jurisdiction to consider his petition. *Maleng*, 490 U.S. at 492.

Third, we agree with the district court that Ridley's registration as a sex offender in Georgia is a collateral consequence of his Florida battery conviction, for which he has already served his prison sentence. *See Ridley v. Conley*, No. 5:16-CV-00192-MP-GRJ, 2016 WL 6634905, at *1 (N.D. Fla. Nov. 8, 2016). Georgia courts have repeatedly held that Georgia's sex offender registry requirement is "regulatory" in nature, not punitive, and that an individual may be compelled to register based on facts not found by a jury. *See Rainer v. State*, 690 S.E.2d 827, 828 (Ga. 2010); *Wiggins v. State*, 702 S.E.2d 865, 868 (Ga. 2010). Because registration in Georgia is a collateral consequence of Ridley's battery conviction rather than part of his punishment, his presence on the registry does not render him "in custody" under Section 2241. *See Van Zant*, 104 F.3d at 327.

Finally, Ridley is not entitled to a default judgment or summary reversal of the district court merely because the State did not file a brief. The State is not required to participate in this appeal because the district court *sua sponte* dismissed Ridley's petition without allowing the State's participation. Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts requires a district court to make a preliminary assessment of a habeas petition and, "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief," to

dismiss it.[1] *See Paez v. Sec'y, Fla. Dep't of Corr.*, 947 F.3d 649, 653 (11th Cir. 2020). Only if the petition passes its initial assessment may the district court order the respondent to answer. *Id.*; *see also* Rules Governing Section 2254 Cases, R. 4 Advisory Committee Notes ("[I]t is the duty of the court to screen out frivolous applications and eliminate the burden that would be placed on the respondent by ordering an unnecessary answer."). Here, Ridley's petition failed the initial assessment. Moreover, although Eleventh Circuit Rule 42-1(b) authorizes dismissal of an appeal where the *appellant* fails to file a brief, no Rule requires us to reverse a district court merely because the appellee did not file a brief. *See, e.g.*, 11th Cir. R. 30-1, 30-2, 31-1; Fed. R. App. P. 32. We therefore deny Ridley's motion.

For the foregoing reasons, the district court is **AFFIRMED** and Ridley's motion for a default judgment is **DENIED**.

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[1] Rule 4 of the Rules Governing Section 2254 Cases also applies to Section 2241 petitions like Ridley's, as provided by Rule 1(b).

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
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July 18, 2022

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 21-13504-JJ
Case Style: Edward Ridley v. Warden
District Court Docket No: 1:21-cv-00013-LAG-TQL

Electronic Filing
All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Tiffany A. Tucker, JJ at (404)335-6193.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch
Phone #: 404-335-6151

OPIN-1 Ntc of Issuance of Opinion

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

EDWARD TYRONE RIDLEY,	:	
	:	
Petitioner,	:	
VS.	:	
	:	**NO. 1:21-CV-00013-LAG-TQL**
WARDEN ANTOINE CALDWELL,	:	
	:	
Respondent.	:	
	:	

RECOMMENDATION OF DISMISSAL

Petitioner Edward Tyrone Ridley, an inmate confined at the Wilcox State Prison in Abbeville, Georgia, has filed a pro se petition for federal habeas corpus relief challenging the denial of his petitions for removal from the Georgia sex offender registry. Pet. 1, ECF No. 1; see also O.C.G.A. §§ 42-1-12, -19. For the following reasons, it is **RECOMMENDED** that Petitioner's Petition be **DISMISSED without prejudice** and that his remaining pending motions (ECF Nos. 2, 4, 5, 6, 7, 9, 10, 11) be **DENIED as moot.**

DISCUSSION

Under the rules governing habeas corpus actions, district courts are required to promptly examine every application filed and thereafter enter a summary dismissal if it "plainly appears from the face of the petition and any attached exhibits that the petitioner is not entitled to relief in the district court[.]" See 28 U.S.C. § 2254 Rule 4; McFarland v. Scott, 512 U.S. 849, 856 (1994); see also 28 U.S.C. § 2243. It is plain on the face of the present application in this case that Petitioner is not now entitled to relief in this Court, and the Petition should therefore be dismissed.

As best as the Court can tell from the Petition, Petitioner was convicted of third-degree attempted sexual battery in Florida in 1995. Pet. 1, ECF No. 1. Petitioner contends the victim in that case was a "20 year old adult," and thus the conviction did not require him to register as a sex offender. Id. Petitioner appears to contend that there was an error in the Florida system, however, and he was in fact placed on the Florida sex offender registry. See id. When Petitioner later moved to Georgia, his inclusion on the Florida registry triggered the requirement to register in Georgia. Attach. 1 to Pet. 2, ECF No. 1-1. Petitioner attempted to rectify this error by filing a petition for release from registration requirements pursuant to O.C.G.A. § 42-1-19 in the Superior Court of Crisp County, Georgia. Id. at 1. Petitioner's petition was denied in 2020. Id. at 3.

Petitioner alleges that he is not challenging the Florida conviction that first obligated him to register as a sex offender; rather, he seeks to challenge the state court denials for "removal off Georgia sexual offender registration pursuant to O.C.G.A. 42-1-12 removal by O.C.G.A. 42-1-19 and that chronic disability." Attach. 1 to Pet. 1, ECF No. 1-1. Petitioner also alleges that he is not challenging a 2013 conviction from Georgia, a 2019 probation revocation conviction from Georgia, or a 2019 case from Cobb County, Georgia. Id. at 1-2.

"The federal habeas statute gives the United States district courts jurisdiction to entertain petitions for habeas relief only from persons who are 'in custody' in violation of the Constitution or laws or treaties of the United States." Maleng v. Cook, 490 U.S. 488, 490 (1989) (per curiam) (citing 28 U.S.C. § 2241(c)(3)) (emphasis in original). The "in-custody" requirement is jurisdictional. Llovera-Linares v. Florida, 559 F. App'x 949, 951

(11th Cir. 2014) (per curiam) (citing Stacey v. Warden, Appalachee Corr. Inst., 854 F.2d 401, 403 (11th Cir. 1988) (per curiam)). Federal courts have "uniformly" held "that sex offender registration requirements do not satisfy the 'in custody' requirement for habeas corpus claims and that, therefore, challenges to registration as a sex offender are not cognizable in habeas corpus actions." Ridley v. Hetzel, No. 2:11CV377-TMH, 2011 WL 3475292, at *1 (M.D. Ala. July 7, 2011), report and recommendation adopted, No. 2:11CV377-TMH, 2011 WL 3474415 (M.D. Ala. Aug. 9, 2011) (collecting cases). And Petitioner "has been told on numerous occasions that he does not meet the 'in custody' requirement" where he simply seeks to challenge his inclusion on a sex offender registry. Ridley v. Fla. Dep't of Law Enforcement, Case No. 5:20cv126-RV-HTC, 2020 WL 2949834, at *4 (N.D. Fla. May 14, 2020). If Petitioner seeks to challenge "the constitutionality of the sex offender registration requirements of . . . Georgia . . . as applied to him," he should file an action pursuant to 42 U.S.C. § 1983 in a federal court in Georgia. Id.[1]

[1] The Court should decline to construe the Petition in this case as a complaint filed pursuant to 42 U.S.C. § 1983. If the Court were to do so, the Petition would be subject to dismissal pursuant to the "three strikes" provision of 28 U.S.C. § 1915(g), which effectively requires the dismissal of a complaint if a prisoner is proceeding in forma pauperis and "has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." See also Dupree v. Palmer, 284 F.3d 1234, 1236 (11th Cir. 2002) (per curiam) ("[T]he proper procedure is for the district court to dismiss the complaint without prejudice when it denies the prisoner leave to proceed in forma pauperis pursuant to the three strikes provision of § 1915(g)."). Petitioner is a "three-striker," see Ridley v. Donald, ECF No. 4 in Case No. 1:07-cv-00177-WLS-RLH (M.D. Ga. Sept. 12, 2007) (identifying three previous cases dismissed as

Because Petitioner is not "in custody" for purposes of federal habeas corpus jurisdiction simply because he is required to register as a sex offender in Georgia, it is **RECOMMENDED** that Petitioner's Petition be **DISMISSED without prejudice.** See, e.g., Thrower v. City of Akron, 43 F. App'x 767, 768 (6th Cir. 2002) (affirming district court's dismissal of habeas petition under Rule 4 where petitioner failed to satisfy "in custody" requirement). It is also **RECOMMENDED** that Petitioner's remaining pending motions (ECF Nos. 2, 4, 5, 6, 7, 9, 10, 11) be **DENIED as moot.**

Generally, before a habeas applicant may appeal a "final order adverse to the applicant," the district court must first issue a certificate of appealability ("COA"). See 28 U.S.C. § 2253(c)(1); 28 U.S.C. § 2254, Rule 11(a). If "the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim," a COA will not be issued unless the prisoner can show, at least, "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 478 (2000). To the extent a COA is required in this case, the undersigned also **RECOMMENDS** that a COA be denied. No reasonable jurist could find that dismissal of this petition was debatable or wrong.

OBJECTIONS

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frivolous and dismissing pursuant to § 1915(g)), and his Petition does not allege any facts that would suggest he is in imminent danger of serious physical injury.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to these recommendations with the Honorable Leslie A. Gardner, United States District Judge, **WITHIN FOURTEEN (14) DAYS** after being served with a copy of this Recommendation. The parties may seek an extension of time to file written objections, provided a request for an extension is filed prior to the deadline for filing written objections. Failure to object in accordance with the provisions of § 636(b)(1) waives the right to challenge on appeal the district judge's order based on factual and legal conclusions to which no objection was timely made. See 11th Cir. R. 3-1.

SO RECOMMENDED, this 21st day of May, 2021.

s/Thomas Q. Langstaff
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

EDWARD TYRONE RIDLEY,	:	
	:	
Petitioner,	:	
	:	
v.	:	CASE NO.: 1:21-CV-13 (LAG) (TQL)
	:	
WARDEN ANTOINE CALDWELL,	:	
	:	
Respondent.	:	
	:	

ORDER

Before the Court is the Magistrate Judge's Report and Recommendation (R&R) (Doc. 12) and Petitioner's Objections (Doc. 15). For the reasons stated below, Petitioner's Objections are **OVERRULED**, and the R&R is **ACCEPTED** and **ADOPTED**.

BACKGROUND

Petitioner is a prisoner presently confined at the Wilcox State Prison in Abbeville, Georgia. (Doc. 12 at 1; Doc. 1 at 1). In 1995, Petitioner was convicted of third-degree sexual battery in Florida. (Doc. 1-1). Petitioner contends that because the victim was a "twenty-year-old adult" he was not required to register as a sex offender and was listed in the Florida registry by mistake. (Doc. 1). When Petitioner later moved to Georgia, his inclusion on the Florida registry triggered the requirement under O.C.G.A. § 42-1-19 to register in Georgia. (Doc. 1-1 at 2–3). Petitioner attempted to correct this alleged error by filing a petition for release from registration requirements pursuant to O.C.G.A. § 42-1-19 in the Superior Court of Crisp County, Georgia. (*Id.* at 1). Petitioner's petition was denied in 2020. (*Id.* at 3). On January 14, 2021, Petitioner filed a *pro se* petition for federal habeas corpus relief challenging the denial of his petition. (Doc. 1; *see also* O.C.G.A. §§ 42-1-12, 42-1-19). Petitioner's federal habeas petition does not challenge his Florida conviction, his 2013 conviction in Georgia, his 2019 probation revocation from Georgia, or a 2019 case from Cobb County, Georgia. (*See* Doc. 1; Doc. 1-1 at 1–2).

On May 21, 2021, the Magistrate Judge issued his R&R. (Doc. 12). Therein, the Magistrate Judge recommends that Petitioner's Petition be dismissed without prejudice and that his pending motions (Docs. 2, 4–7, 9–11) be denied as moot.[1] (Doc. 12 at 1). The Magistrate Judge further recommends that the Court deny a certificate of appealability. (*Id.* at 4). The Magistrate Judge's R&R triggered the fourteen-day period provided under 28 U.S.C. § 636(b)(1)(C) and Federal Rule of Civil Procedure 72(a) for the parties to file written objections. Petitioner timely filed his Objection on June 1, 2021. (Doc. 15). Petitioner's Objection is now ripe for review. *See* Fed. R. Civ. P. 72.

LEGAL STANDARD

"[I]n determining whether to accept, reject, or modify the magistrate's report and recommendations, the district court has the duty to conduct a careful and complete review." *Williams v. Wainwright*, 681 F.2d 732, 732 (11th Cir. 1982) (per curiam) (citation omitted). Pursuant to 28 U.S.C. § 636(B)(1), the Court reviews *de novo* dispositive portions of the R&R to which Petitioner objects. Courts review unobjected-to portions of the R&R and non-dispositive orders for clear error. *See* 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72. While the Court may review for clear error where there are no objections, it is entitled to conduct a *de novo* review and even order a hearing on issues of fact "to aid its review of a magistrate's report." *Wainwright*, 681 F.2d at 732. The Court also has discretion to consider new facts and arguments raised in an objection. *Williams v. McNeil*, 557 F.3d 1287, 1290–91 (11th Cir. 2009). When a party's objections, however, are "[f]rivolous, conclusive, or general," the district court need not consider them. *United States v. Schultz*, 565 F.3d 1353, 1361 (11th Cir. 2009) (per curiam) (citation omitted).

DISCUSSION

Petitioner objects to the Magistrate Judge's recommendation that his Petition be dismissed. (Doc. 15 at 2). Specifically, Petitioner argues that his challenge to be "legally removed from this two[-]decade old disability . . . is legally cognizable under habeas since [he is] not challenging the placement in [the] Georgia Registration." (*Id.*). Petitioner also

[1] After the R&R was issued, Petitioner filed a Motion for Default Judgment (Doc. 13), a Motion for Summary Judgment (Doc. 14), and a Motion for Reconsideration (Doc. 16).

argues that "the 'in custody' doctrine" is inapplicable because he is not challenging an expired sentence, but to the extent that the doctrine applies, Petitioner asserts that he is in custody because he is "in prison and on state probation for violating the alleged [O.C.G.A.] § 42-1-12 requirements." (*Id.* at 2–4).

"The federal habeas statute gives the United States district courts jurisdiction to entertain petitions for habeas relief only from persons who are '*in custody* in violation of the Constitution or laws or treaties of the United States.'" *Maleng v. Cook*, 490 U.S. 488, 490 (1989) (per curiam) (first citing 28 U.S.C. § 2241(c)(3); and then citing 28 U.S.C § 2254(a)). "This 'in custody' requirement is jurisdictional." *Llovera-Linares v. Florida*, 559 F. App'x 949, 951 (11th Cir. 2014) (per curiam) (citing *Stacey v. Warden, Apalachee Corr. Inst.*, 854 F.2d 401, 403 (11th Cir. 1988)). "[N]umerous courts have found uniformly that sex offender registration requirements do not satisfy the 'in custody' requirement for habeas corpus claims and that, therefore, challenges to registration as a sex offender are not cognizable in habeas corpus actions." *Ridley v. Hetzel*, No. 2:11-cv-377-TMH, 2011 WL 3475292, at *1 (M.D. Ala. July 7, 2011) (citations omitted).

Petitioner "has been told on numerous occasions that he does not meet the 'in custody' requirement" where he seeks to challenge his inclusion on a sex offender registry. *Ridley v. Fla. Dep't of Law Enf't*, No. 5:20-cv-126-RV-HTC, 2020 WL 2949834, at *4 (N.D. Fla. May 14, 2020) (first citing *Hetzel*, 2011 WL 3475292, at *1–2; and then citing *Ridley v. Fla. Dep't of Corr.*, No. 5:16-cv-192-MP-GRJ, 2016 WL 6634943, at *1 (N.D. Fla. Oct. 4, 2016)), *report and recommendation adopted sub nom. Ridley v. Ford*, No. 5:20cv126-RV-HTC, 2020 WL 2949907 (N.D. Fla. June 3, 2020), *appeal dismissed*, No. 20-12303-E, 2020 WL 5647736 (11th Cir. July 15, 2020). Moreover, Petitioner's argument that he meets the "in custody" requirement because he is currently in prison for violating Georgia's registration requirement does not change this determination. As our sister Court recently explained to Petitioner when he made an identical challenge while incarcerated in Crisp County, Georgia, "once [a] sentence imposed for a conviction has completely expired, the *collateral* consequences of that conviction are not themselves sufficient to render an individual 'in custody' for the purposes of a habeas attack upon it."

Id. (emphasis added) (quoting *Maleng*, 490 U.S. at 492). Petitioner has previously "admit[ted] that he has served his sentence for the conviction which resulted in him being placed on the sex offender registries of Florida and Georgia." *Id.* "Thus, neither [Georgia's] registration requirement . . . nor his present incarceration for violating th[e] requirement affords [Petitioner] the ability to challenge his 1996 conviction." *Id.* (citing *Bonser v. Dist. Att'y Monroe Cnty.* 659 F. App'x 126, 129–30 (3d Cir. 2016)). This is so because "[b]eing subject to registration requirements is itself a collateral consequence, and so too are the penalties—including conviction and incarceration—that result from the violation of such requirements." *Bonser*, 659 F. App'x at 128 (first citing *Maleng*, 490 U.S. at 492; then citing *Virsnieks v. Smith*, 521 F.3d 707, 720 (7th Cir. 2008); then citing *Williamson v. Gregoire*, 151 F.3d 1180, 1184 (9th Cir. 1998); and then citing *Davis v. Nassau Cnty.*, 524 F. Supp. 2d 182, 189 (E.D.N.Y. 2007)). Accordingly, Petitioner is not "in custody" under 28 U.S.C. § 2241 and the Court lacks jurisdiction to consider his Petition.

Although Petitioner initiated this action by filing a petition under 28 U.S.C. § 2241, the Court is "obligated to look beyond the label of a *pro se* inmate's motion to determine if it is cognizable under a different statutory framework." *United States v. Stossel*, 348 F.3d 1320, 1322 n.2 (11th Cir. 2003) (per curiam) (citing *United States v. Jordan*, 915 F.2d 622, 624–25 (11th Cir. 1990)). Federal courts may "ignore the legal label that a *pro se* litigant attaches to a motion and recharacterize the motion in order to place it within a different legal category" so as "to avoid an unnecessary dismissal, to avoid inappropriately stringent application of formal labeling requirements, or to create a better correspondence between the substance of a *pro se* motion's claim and its underlying legal basis." *Castro v. United States*, 540 U.S. 375, 381–82 (2003) (citations omitted).

As our sister court found, Petitioner's Petition is "more properly construed as a civil rights action under 42 U.S.C. § 1983." *Fla. Dep't of Law Enf't*, 2020 WL 2949834, at *2 (citations omitted); *see also Wilkinson v. Dotson*, 544 U.S. 74, 76 (2005) (holding that prisoners' claims challenging parole procedures may be brought under § 1983 instead of "under the federal habeas corpus statutes"). Petitioner, however, explicitly states that "[t]his is not a case challenging my civil rights under [§] 1983." (Doc. 15 at 4). Reviewing

the petition as a § 1983 action would result in dismissal of Petitioner's claims pursuant to the three strikes provision of the Prison Litigation Reform Act (PLRA). *See* 28 U.S.C. § 1915(g). Petitioner filed a Motion to Proceed *in forma pauperis* (Doc. 2) but was previously identified as a three striker in 2007. *See Ridley v. Donald*, No. 1:07-cv-177-WLS-RLH, (Doc. 4 at 2) (M.D. Ga. 2007 filed Sept. 12, 2007). And Petitioner does not allege any facts which suggest that he is in imminent danger of serious physical injury. Thus, even construed as a § 1983 action, "[t]he proper procedure for a district court faced with a prisoner who seeks *in forma pauperis* status but is barred by the three strikes provision is to dismiss the complaint without prejudice." *Wappler v. Celestine*, No. 20-23206-cv-UNGARO, 2020 WL 7134821, at *2 (S.D. Fla. Oct. 28, 2020) (citing *Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002) (per curiam)).

CONCLUSION

Upon full review and consideration of the record, Petitioner's Objections (Doc. 15) are **OVERRULED**, and the Court finds that the Magistrate Judge's Order (Doc. 12) should be, and hereby is, **ACCEPTED**, **ADOPTED**, and made the Order of this Court for the reason of the findings made and reasons stated therein. Accordingly, Petitioner's Petition is **DISMISSED without prejudice**. Petitioner's pending motions (Docs. 2, 4–7, 9–11, 13–14) are **DENIED as moot**. The Court further **DENIES** any certificate of appealability as no reasonable jurist could find that the dismissal of this Petition was debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 478 (2000).

SO ORDERED, this 17th day of September, 2021.

/s/ Leslie A. Gardner
LESLIE A. GARDNER, JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

August 16, 2022

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 21-13504-JJ
Case Style: Edward Ridley v. Warden
District Court Docket No: 1:21-cv-00013-LAG-TQL

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Tiffany A. Tucker, JJ/lt
Phone #: (404)335-6193

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-13504-JJ

EDWARD TYRONE RIDLEY,

Petitioner - Appellant,

versus

WARDEN ANTOINE CALDWELL,

Respondent - Appellee.

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

BEFORE: WILSON, BRASHER, and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing construed from emergency expedited motion for rehearing oral filed by Edward Ridley is DENIED.

ORD-41

Additional material from this filing is available in the Clerk's Office.