# APPENDIX TO PETITION FOR WRIT OF CERTIORARI

[DO NOT PUBLISH]

In the

# United States Court of Appeals

## For the Eleventh Circuit

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No. 22-11167

Non-Argument Calendar

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JERLARD DEREK REMBERT,

Plaintiff-Appellant,

*versus*

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF FLORIDA,
ATTORNEY GENERAL, STATE OF FLORIDA,

Defendants-Appellees.

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

D.C. Docket No. 8:21-cv-03008-CEH-SPF

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Before WILSON, LAGOA, and ANDERSON, Circuit Judges.

PER CURIAM:

Jerlard Rembert, a former state prisoner proceeding *pro se*, appeals the district court's order dismissing *sua sponte* of his 42 U.S.C. § 1983 complaint against Ashley Moody and the Florida Office of the Attorney General. The district court concluded that Rembert's claims were barred under *Heck v. Humphrey*, 512 U.S. 477 (1994), because Rembert was attempting to challenge the validity of his conviction and incarceration but had not demonstrated that his conviction had been overturned. Moreover, the district court found that the statute of limitations also bars Rembert's action. After careful review, we affirm.

## I. BACKGROUND

Rembert was convicted of first-degree murder in 1995. Between February 16, 1995, and January 31, 2013, Rembert was incarcerated in state prison. On December 29, 2021, Rembert filed a *pro se* complaint under 42 U.S.C. § 1983 in federal court. In the complaint, he asserted claims against the state attorney general for violating his constitutional rights. Specifically, he alleges that the Sixth Judicial Circuit Court in and for Pinellas County, Florida convicted him while he was incompetent in violation of the 8th and 14th Amendments of the U.S. Constitution. The district court dismissed the complaint for failure to state a claim, reasoning that *Heck*, 512

U.S. at 447, barred Rembert's claim because it would necessarily invalidate his conviction and that the statute of limitations bars the action. This appeal followed.

## II. STANDARD OF REVIEW

We review *de novo* a district court's *sua sponte* dismissal for failure to state a claim, *Henley v. Payne*, 945 F.3d 1320, 1326–27 (11th Cir. 2019), "viewing the allegations in the complaint as true." *Hughes v. Lott*, 350 F.3d 1157, 1159–60 (11th Cir. 2003). We also review *de novo* "a district court's interpretation and application of a statute of limitations." *Foudy v. Indian River Cty. Sheriff's Office*, 845 F.3d 1117, 1122 (11th Cir. 2017). "To obtain reversal of a district court judgment that is based on multiple, independent grounds, an appellant must convince us that every stated ground for the judgment against him is incorrect." *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014). If an appellant fails to properly challenge on appeal one of the grounds on which the district court based its judgment, he is deemed to have abandoned any challenge to that ground, and it follows that the judgment is due to be affirmed. *Id.*

## III. ANALYSIS

We construe *pro se* pleadings liberally and hold them "to a less strict standard than pleadings filed by lawyers." *Alba v. Montford*, 517 F.3d 1249, 1252 (11th Cir. 2008). But "we cannot act as de facto counsel or rewrite an otherwise deficient pleading to sustain

an action." *Bilal v. Geo Care, LLC*, 981 F.3d 903, 911 (11th Cir. 2020).

Here, Rembert argues that the district court erred in dismissing his claims based on the *Heck* doctrine. But the district court dismissed Rembert's complaint on two independent grounds—the *Heck* doctrine and the statute of limitations. Because Rembert failed to address or challenge the district court's finding on the statute of limitations on appeal, he has abandoned any challenge in this regard, and the judgment is due to be affirmed. *Sapuppo*, 739 F.3d at 680. Moreover, as we may affirm on any ground supported by the record, we need not reach Rembert's remaining argument concerning *Heck*.

## IV. CONCLUSION

For the reasons stated, we affirm the district court's order.

**AFFIRMED.**

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**TAMPA DIVISION**

JERLARD D. REMBERT,

Plaintiff,

v. Case No: 8:21-cv-3008-CEH-SPF

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF FLORIDA and ASHLEY MOODY,

Defendants.
_____/

**ORDER**

This cause comes before the Court upon the Report and Recommendation filed by Magistrate Judge Sean P. Flynn on January 26, 2022 (Doc. 17). In the R&R, the Magistrate Judge recommends that the Court dismiss Plaintiff's complaint and enter final judgment in favor of Defendants. Doc. 17 at 7.

All parties were furnished copies of the R&R and were afforded the opportunity to file objections in accordance with 28 U.S.C. § 636(b)(1). Plaintiff timely objected to the R&R (Doc. 18). Upon consideration of the R&R, Plaintiff's objection, and upon the Court's independent examination of the file, the Court will adopt the R&R and overrule Plaintiff's objection.

## I. BACKGROUND

Plaintiff sues Florida Attorney General Ashley Moody and the Office of the Attorney General under 42 U.S.C. § 1983. Doc. 1 at 2–3. He alleges that "Florida

convicted him while [i]ncompetent to proceed" in violation of his rights under the Eighth and Fourteenth Amendments to the United States Constitution and in violation of Florida Rule of Criminal Procedure 3.212(b). *Id.* at 3. He alleges that he was convicted in Florida's Sixth Judicial Circuit Court on February 13, 1995, on two counts of second-degree murder without being found competent. *Id.* at 5. He asserts that he was imprisoned between February 16, 1995, and January 31, 2013. *Id.* During that time, he allegedly "exhausted state remedies claiming incompetence with 3.800, 3.800(A) and 3.850 motions" and sought habeas relief, "which were all denied or dismissed." *Id.* Plaintiff seeks compensatory damages in the amount of $2,920,000,000 and punitive damages in the amount of $6,800,000,000. *Id.* at 9.

On January 11, 2022, the Magistrate Judge ordered Plaintiff Jerlard D. Rembert to show cause as to why the Court should not dismiss his complaint as barred by either the *Heck* doctrine or the statute of limitations. Doc. 12 at 1. Rembert responded to that order (Doc. 13). After reviewing Rembert's response, the Magistrate Judge issued the R&R, in which he recommends that the Court dismiss Rembert's complaint (Doc. 17). Plaintiff objects to the R&R (Doc. 18).

## II. LEGAL STANDARD

Magistrate judges may submit proposed findings of fact and recommendations for disposition by Article III judges. 28 U.S.C. § 636(b)(1)(B). When a party makes a timely and specific objection to a magistrate judge's report and recommendation, the district judge "shall make a *de novo* determination of those portions of the report or

specified proposed findings or recommendations to which objection is made." *Id.* § 636(b)(1)(C). In the absence of specific objections, there is no requirement for a district judge to review factual findings *de novo*, *Garvey v. Vaughn*, 993 F.2d 776, 779 n.9 (11th Cir. 1993), and the district judge may accept, reject, or modify, in whole or in part, the findings and recommendations, 28 U.S.C. § 636(b)(1)(C). The district judge must review legal conclusions *de novo*. *See Cooper-Houston v. S. Ry. Co.*, 37 F.3d 603, 604 (11th Cir. 1994); *Ashworth v. Glades Cnty. Sch. Bd. of Cnty. Comm'rs*, 379 F. Supp. 3d 1244, 1246 (M.D. Fla. 2019). Finally, objections to a magistrate judge's report and recommendation must be "specific" and "clear enough to permit the district court to effectively review the magistrate judge's ruling." *Knezevich v. Ptomey*, 761 F. App'x 904, 906 (11th Cir. 2019) (internal quotation marks omitted).

While pleadings from *pro se* litigants are held to a less stringent standard than pleadings drafted by attorneys, *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998) (per curiam), they still must meet minimal pleading standards, *Pugh v. Farmers Home Admin.*, 846 F. Supp. 60, 61 (M.D. Fla. 1994).

## III. DISCUSSION

In a thorough and well-reasoned R&R, the Magistrate Judge recommends that the Court dismiss Plaintiff's complaint because Plaintiff has failed to show cause as to why his complaint should not be dismissed as barred by the *Heck* doctrine or the statute of limitations. Doc. 17 at 1. In the R&R, the Magistrate Judge explains that Plaintiff fails to establish that his conviction or sentence has been reversed on direct appeal,

expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus. *Id.* at 2. To the contrary, as the Magistrate Judge recognizes, Plaintiff admits that he sought state and federal habeas relief, all of which were denied or dismissed, and that he "exhausted state remedies" while in prison. *Id.* The Magistrate Judge also rejects Plaintiff's argument that *Heck* does not bar his claims because the doctrine does not preclude relief under § 1983 where a plaintiff is no longer incarcerated and, thus, ineligible for habeas relief. *Id.* at 2–6. Following an extensive review of relevant case law, the Magistrate Judge concludes that the Court need not determine whether an exception to the *Heck* doctrine exists, as Plaintiff would not be entitled to the application of such an exception because he received ample opportunity to seek relief from his conviction and his attempts were unsuccessful. *Id.* at 4–5. The Magistrate Judge also explains that "[t]his is precisely the situation the *Heck* doctrine operates to address." *Id.* at 5.

Further, the Magistrate Judge reasons that, even if the *Heck* doctrine does not apply, the statute of limitations bars this action because Plaintiff filed this action after the running of the statute of limitations. *Id.* at 6. The Magistrate Judge also recognizes that Plaintiff failed to address this issue in responding to the Order to Show Cause. *Id.*

In objecting to the R&R, Plaintiff argues that he "is no longer incarcerated," thereby "making him ineligible for Habeas Corpus relief and the Federal 1983 Civil rights complaint for damages the only remedy." Doc. 18 at 1. He also argues that

"[S]upreme [C]ourt precedent does not require barring 1983 damages claims when the plaintiff cannot pursue habeas relief." *Id.* at 4. Finally, he contends that when habeas relief is unavailable, "insufficient interest exists to justify dispending with 1983's remedial structure," and he highlights that he is no longer incarcerated. *Id.*

In *Heck v. Humphrey*, the United States Supreme Court held:

> [I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254.

512 U.S. 477, 486–87 (1994).

Plaintiff does not argue that his conviction or sentence was reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus. Plaintiff argues, again, that he is no longer incarcerated and, therefore, ineligible for habeas relief. The Magistrate Judge rejected this argument. Plaintiff fails to clearly articulate why the Magistrate Judge's analysis errs.

As the Magistrate Judge recognizes, in *Reilly v. Herrera*, the Eleventh Circuit declined to decide whether a plaintiff may bring a § 19833 action if habeas relief is unavailable, even if success on the merits would call into question the conviction's validity. 622 F. App'x 832, 834 (11th Cir. 2015). There, the Eleventh Circuit reasoned that the plaintiff-appellant "had ample time to pursue an appeal or other post-

conviction remedies on the supervised released revocation, yet did not avail himself of any of them," during his three-year term of imprisonment. *Id.* Additionally, in *Vickers v. Donahue*, the Eleventh Circuit declined to decide whether a plaintiff who has no available habeas remedy may proceed under § 1983, even though success on the merits would undermine the validity of an order of revocation and the resulting conviction. 137 F. App'x 285, 289 (11th Cir. 2005). In reaching this conclusion, the court highlighted that the plaintiff-appellant did not lack a remedy to seek post-revocation relief because he could have appealed the revocation order and, if he had prevailed, *Heck* would not bar his § 1983 claims. *Id.* Relying upon this rationale, the court in *Baker v. City of Hollywood* explained that it need not inquire into whether the plaintiff was deprived of a means of challenging his conviction or determine whether an exception to *Heck* existed because the plaintiff sought postconviction relief at the state level, but voluntarily withdrew his claims in exchange for a mitigation of his sentence. No. 08-60294-CIV, 2008 WL 2474665, at *7 (S.D. Fla. June 17, 2008). The court explained that, like *Vickers*, the plaintiff did not lack an avenue to seek relief from his conviction, even though habeas relief was unavailable to him. *Id.*

Relying upon this authority, the Magistrate Judge recommends that the Court need not determine whether an exception to the *Heck* doctrine exists because Plaintiff would not be entitled to the application of such an exception. The Court agrees with the Magistrate Judge's analysis. Plaintiff had ample opportunity to seek relief from his conviction. He appealed his conviction and sought habeas relief, but his challenges to the conviction were unsuccessful. Thus, the *Heck* doctrine bars this action.

Turning to the statute of limitations, "[a]ll constitutional claims brought under § 1983 are tort actions and, thus, are subject to the statute of limitations governing personal injury actions in the state where the § 1983 action has been brought." *Boyd v. Warden, Holman Corr. Facility*, 856 F.3d 853, 872 (11th Cir. 2017). Florida has a four-year statute of limitations, *Chappell v. Rich*, 340 F.3d 1279, 1283 (11th Cir. 2003), which begins to run when the facts that would support a cause of action are apparent or should be apparent to a person with a reasonable prudent regard for his or her rights, *Mullinax v. McElhenney*, 817 F.2d 711, 716 (11th Cir. 1987). "Based on the four-year statute of limitations for § 1983 claims, Rembert's last date to timely file a civil action was in 1999." *Rembert v. Florida*, 572 F. App'x 908, 909 (11th Cir. 2014) (affirming the district court's dismissal of Plaintiff's § 1983 action, in which he alleged that Florida violated his constitutional rights for trying and convicting him while incompetent to proceed in relation to his 1995 trial). The Magistrate Judge highlights this authority and recognizes that, even if the statute of limitations was tolled during Plaintiff's incarceration, he did not file the complaint within four years of his release from prison in January of 2013. Doc. 17 at 6 n.2. Plaintiff does not object to this portion of the R&R. The Court agrees with the Magistrate Judge that, even if the *Heck* doctrine does not bar this action, the statute of limitations bars the action.

Accordingly, it is **ORDERED AND ADJUDGED**:

1. The Report and Recommendation of Magistrate Judge Flynn (Doc. 17) is adopted, confirmed, and approved in all respects and is made a part of this order for all purposes, including appellate review.

2. Plaintiff's objection to the Report and Recommendation (Doc. 18) is overruled.
3. Because Plaintiff has failed to show cause as to why the Court should not dismiss this action as barred by the *Heck* doctrine or the statute of limitations, this action is **DISMISSED**, **with prejudice**.
4. The Clerk is **DIRECTED** to enter judgment in favor of Defendants Ashley Moody and the Office of the Attorney General of the State of Florida and against Plaintiff Jerlard D. Rembert.
5. The Clerk is further directed to terminate all pending motions and deadlines and to **CLOSE** this case.

**DONE AND ORDERED** in Tampa, Florida on April 4, 2022.

Charlene Edwards Honeywell
Charlene Edwards Honeywell
United States District Judge

Copies to:
The Honorable Sean P. Flynn
Counsel of Record and Unrepresented Parties, if any

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JERLARD D. REMBERT,

Plaintiff,

Case No: 8:21-cv-3008-CEH-SPF

v.

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF FLORIDA and ASHLEY MOODY,

Defendants.

_____/

**REPORT AND RECOMMENDATION**

This cause is before the Court on the Court's Order to Show Cause (Doc. 12) and Plaintiff's Response to the Order to Show Cause (Doc. 13). Because Plaintiff has failed to show cause as to why his Complaint should not be dismissed as barred by the *Heck* doctrine or the statute of limitations, the undersigned recommends that Plaintiff's Complaint be dismissed.

This case is the latest in a series of civil rights actions[1] brought by Plaintiff Jerlard D. Rembert arising from his 1995 conviction. In this current case, Plaintiff once again alleges that that the Sixth Judicial Circuit Court in and for Pinellas County, Florida convicted him while he was incompetent in violation of the 8th and 14th Amendments to

[1] *See Rembert v. Pinellas County*, et al, 8:04-cv-01125-SDM (M.D. Fla.); *Rembert v. State of Florida*, 6:09-cv-00613-MSS-GJK (M.D. Fla.); *Rembert v. State of Florida*, 8:09-cv-00733-JSM-MAP (M.D. Fla.); *Rembert v. State of Florida*, 8:13-cv-01774-EAK-EAJ (M.D. Fla.); *Rembert v. Pinellas County*, 8:20-cv-00010-TPB-SPF (M.D. Fla.); *Rembert v. Attorney General, State of Florida*, 8:20-cv-01577-VMC-AAS (M.D. Fla.)

the U.S. Constitution. (Doc. 1). Plaintiff further alleges that, as a result of this conviction, he was incarcerated between 1995 and 2013. (*Id.*).

As detailed in the Order to Show Cause, Plaintiff's suit appears to be barred by the *Heck* doctrine. *See Rembert v. Pinellas Cty. Fla.*, No. 8:20-cv-10-T-60SPF, 2020 WL 1957876 (M.D. Fla. Jan. 3, 2020), report and recommendation adopted, 2020 WL 1955356 (M.D. Fla. Apr. 23, 2020). In *Heck v. Humphrey*, 512 U.S. 477 (1994), the United States Supreme Court held:

> [I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a [42 U.S.C.] § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254.

*Id.* at 486–87. Here, Plaintiff fails to establish that his conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. To the contrary, Plaintiff admits that he filed both state and federal habeas corpus actions which were all denied or dismissed. (Doc. 1). Plaintiff also alleges that he "exhausted state remedies" while in prison. (*Id.*).

In response to the Order to Show Cause, Plaintiff argues that his claims are not barred because the *Heck* doctrine does not preclude relief under 42 U.S.C. § 1983 where a plaintiff is no longer incarcerated and thus ineligible for habeas relief. (Doc. 13). For the following reasons, Plaintiff's argument fails.

In *Spencer v. Kemna*, 532 U.S. 1 (1998), "a combination of five concurring and dissenting Justices agreed in dicta that a former prisoner, no longer in custody, may bring a § 1983 claim establishing the unconstitutionality of a conviction or confinement without being bound to satisfy a favorable-termination requirement that it would be impossible as a matter of law for him to satisfy." *Baker v. City of Hollywood*, No. 08-60294-CIV, 2008 WL 2474665, at *6 (S.D. Fla. June 17, 2008) (quotations and citations omitted). Based on this "patchwork plurality," a circuit split has developed regarding the application of *Heck* to situations where a claimant, who may no longer bring a habeas action, asserts a 42 U.S.C. § 1983 complaint attacking a sentence or conviction. *See Domotor v. Wennet*, 630 F. Supp. 2d 1368, 1375–77 (S.D. Fla. 2009) (discussing the circuit split and collecting cases).

Though the Eleventh Circuit has provided some guidance on the issue, it has not yet expressly determined whether the *Heck* doctrine bars claims for relief for plaintiffs who are ineligible for habeas relief because they are no longer incarcerated. *See, e.g.*, *Reilly v. Herrera*, 622 F. App'x 832, 834 (11th Cir. 2015) ("We have not explicitly ruled on whether a plaintiff may bring a § 1983 action in the event that habeas relief is unavailable, even if success on the merits would call into question the validity of a conviction."); *Topa v. Melendez*, 739 F. App'x 516, 519 n.2 (11th Cir. 2018) (mentioning the circuit split and stating that "[t]his circuit has not definitively answered the question") (citations omitted). In declining to explicitly rule on the issue of whether the *Heck* doctrine bars claims for relief under § 1983 where habeas relief is unavailable, the *Reilly* Court stated:

> We decline to [rule on the issue] here because Mr. Reilly's case does not fit within the framework of scenarios mentioned in Justice Souter's *Spencer* concurrence. During his three-year term of imprisonment, Mr. Reilly had ample time to pursue an appeal or other post-conviction remedies on the supervised release revocation, yet he did not avail himself of any of them. We doubt that Justice Souter intended to propose a broad exception to include prisoners who had the opportunity to challenge their convictions but failed to do so.

622 F. App'x at 834. Similarly, in *Baker*, the Southern District of Florida refrained from determining whether there should be an exception to the *Heck* doctrine:

> Here, the Court need not inquire as to whether Plaintiff has been deprived of a means of challenging his conviction and weigh whether there should be an exception to the *Heck* bar. This is because Plaintiff *did* seek postconviction relief at the state level but voluntarily withdrew such claims, "including, but not limited to, allegations the State presented false evidence at trial, the Hollywood Police Department failed to provide access to the original videotape, and former trial counsel provided ineffective assistance." D.E. # 38–5; *see also* Compl. ¶ 76. In exchange for abandoning his request for postconviction relief, Plaintiff's original sentence was mitigated to three and one half years time served. *Id.* The Eleventh Circuit's unpublished decision in *Vickers* provides some guidance here. 137 Fed. Appx. 285. There, the court held that "the Heck bar appli[ed] to [the plaintiff's] claim despite the unavailability of habeas relief." *Id.* at 290. One of the court's main considerations in reaching this result was that the plaintiff was not without a remedy to seek relief from his sentence of imprisonment, as he could have appealed the order imposing that sentence. Likewise, even though a habeas corpus action is currently unavailable to Plaintiff here, he was not without an avenue to seek relief from his conviction.

2008 WL 2474665, at *7.

Here, Plaintiff—like the plaintiffs in *Reilly* and *Baker*—had ample opportunity to seek relief from his conviction. In fact, as set forth above, Plaintiff did directly appeal his conviction and seek habeas relief while incarcerated. (Doc. 1). Those attempts to challenge his conviction were unsuccessful. *Id.* Accordingly, this Court need not

determine whether there is an exception to the *Heck* doctrine, because Plaintiff would not be entitled to the application of such an exception. *See, e.g., Guerrero v. Gates*, 442 F.3d 697, 705 (9th Cir. 2006) (explaining the Ninth Circuit's previous decision to allow an exception to *Heck* "was founded on the unfairness of barring a plaintiff's potentially legitimate constitutional claims when the individual immediately pursued relief after the incident giving rise to those claims and could not seek habeas relief only because of the shortness of his prison sentence."); *cf. Baker*, 2008 WL 2474665, at *7 ("In sum, to the extent Plaintiff's claims are based on violation of his due process rights at trial, they are subject to dismissal without prejudice to be refiled *if and when* they accrue by virtue of a favorable resolution of his battery conviction.") (emphasis added); *Mcbride v. Guzina*, No. 8:21-cv-546-CEH-AEP, 2022 WL 111230, at *18 (M.D. Fla. Jan. 12, 2022) ("[T]he Court need not reach the question of whether *Heck* acts as a bar to some of Plaintiff's claims. It is worth noting, however, that Plaintiff had the opportunity to appeal his convictions, and according to his allegations, he did appeal his convictions, and all appeals were denied.").

In other words, Plaintiff's argument misses the point. "A successful suit by the Plaintiff in this case would raise the specter of an 'end run' around the federal habeas statute, and create the problem of two inconsistent judgments arising out of the same facts." *Gordon v. Amundson*, No. 13-60483-CIV, 2015 WL 281602, at *7 (S.D. Fla. Jan. 21, 2015); *see also Christy v. Sheriff of Palm Beach Cty., Fla.*, 288 F. App'x 658, 666 (11th Cir. 2008) ("[T]he court was correct to dismiss these claims under *Heck* because if Christy prevailed on these two claims, it would necessarily imply the invalidity of his 1985 conviction."). This is precisely the situation the *Heck* doctrine operates to address. *See*

*Heck*, 512 U.S. at 490 n.10 ("[T]he principle barring collateral attacks [on criminal convictions]—a longstanding and deeply rooted feature of both the common law and our own jurisprudence—is not rendered inapplicable by the fortuity that a convicted criminal is no longer incarcerated.").

Even if the *Heck* doctrine did not apply, however, Plaintiff's action would be barred by the statute of limitations. Constitutional claims brought under § 1983 are "subject to the statute of limitations governing personal injury actions in the state where the § 1983 action has been brought." *Boyd v. Warden, Holman Corr. Facility*, 856 F.3d 853, 872 (11th Cir. 2017) (citing *Wallace v. Kato*, 549 U.S. 384, 387 (2007)). Florida has a four-year statute of limitations for personal injury claims. *Chappell v. Rich*, 340 F.3d 1279, 1283 (11th Cir. 2003). The time period does not begin to run until the facts that would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his or her rights. *Mullinax v. McElhenney*, 817 F.2d 711, 716 (11th Cir. 1987). "Based on the four-year statute of limitation for § 1983 claims, Rembert's last date to timely file a civil action was in 1999." *Rembert v. Fla.*, 572 F. App'x 908, 909 (11th Cir. 2014).[2] Plaintiff, therefore, filed his Complaint well after the running of the applicable statute of limitations, and as such, his Complaint failed to state a cognizable claim for relief. *Id.* Plaintiff failed to address this issue in his Response to the Order to Show Cause. (Doc. 13). Accordingly, it is hereby

[2] Plaintiff was released from prison in January 2013. Even if the statute of limitations was tolled during Plaintiff's incarceration, as he previously asserted, Plaintiff did not file his Complaint within four years of that date.

RECOMMENDED:

1. Plaintiff's Complaint be dismissed.

2. The Clerk be directed to enter final judgment in favor of the Defendants and close the case.

IT IS SO REPORTED in Tampa, Florida, on this 26th day of January, 2022.

SEAN P. FLYNN
UNITED STATES MAGISTRATE JUDGE

**NOTICE TO PARTIES**

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. See 11th Cir. R. 3-1.

cc: Hon. Charlene Honeywell
Counsel of Record