

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 22-6636

BRUCE ALLEN BUCKNER,

Plaintiff - Appellant,

v.

DANIEL PORTER, York County Solicitor,

Defendant - Appellee.

No. 22-6637

BRUCE ALLEN BUCKNER,

Plaintiff - Appellant,

v.

DAVID HAMILTON, York County Clerk of Court; YORK COUNTY CLERK OF COURT,

Defendants - Appellees.

Appeals from the United States District Court for the District of South Carolina, at Rock Hill. Terry L. Wooten, Senior District Judge. (0:21-cv-03873-TLW; 0:21-cv-03874-TLW)

Submitted: November 23, 2022

Decided: December 29, 2022

Before HARRIS and RICHARDSON, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Bruce Allen Buckner, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In these consolidated appeals, Bruce Allen Buckner appeals the district court's orders and judgments accepting the recommendations of the magistrate judge and dismissing his complaints. We have reviewed the record and find no reversible error. Accordingly, we affirm. We also deny Buckner's motions to clarify, for a stay, and to vacate. 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

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Bruce Allen Buckner,

Case No. 0:21-cv-3873-TLW

PLAINTIFF

v.

Order

York County Solicitor Daniel Porter,

DEFENDANT.

Plaintiff Allen Buckner, proceeding pro se and in forma pauperis, alleges violations of his constitutional rights by York County Solicitor Daniel Porter (“Defendant”). The matter now comes before the Court for review of the Report and Recommendation (Report) filed by the magistrate judge to whom this case was assigned. ECF No. 11. In the R&R, the magistrate judge recommends that the Complaint be dismissed with prejudice pursuant to prosecutorial immunity and *Heck v. Humphrey*, 512 U.S. 477 (1994). Plaintiff filed objections to the R&R, but his objections do not address the substance of the Report. See ECF No. 17. This matter is now ripe for decision. In reviewing the Report, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed,

in either case the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Hous. Auth. of City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of the standard set forth in *Wallace*, the Court has reviewed, *de novo*, the Report and the objections. After careful review of the Report and the objections, for the reasons stated by the magistrate judge, the Report is **ACCEPTED**. Plaintiff's objections are **OVERRULED**. His Complaint is hereby **DISMISSED WITH PREJUDICE**.¹

IT IS SO ORDERED.

s/ Terry L. Wooten

Terry L. Wooten
Senior United States District Judge

May 6, 2022
Columbia, South Carolina

¹ The remaining outstanding motions, ECF Nos. 18, 22, 25, 28, 29 are hereby denied as moot.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Bruce Allen Buckner,)	C/A No.: 0:21-3873-TLW-SVH
)	
Plaintiff,)	
)	
vs.)	
)	REPORT AND
York County Solicitor Daniel)	RECOMMENDATION
Porter,)	
)	
Defendant.)	
)	

Bruce Allen Buckner (“Plaintiff”), proceeding pro se, filed this civil action pursuant to 42 U.S.C. § 1983, alleging violations of his constitutional rights by York County Solicitor Daniel Porter (“Defendant”). Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and Local Civ. Rule 73.02(B)(2)(d) (D.S.C.), the undersigned is authorized to review such complaints for relief and submit findings and recommendations to the district judge. For the following reasons, the undersigned recommends this case be summarily dismissed.

I. Factual and Procedural Background

Plaintiff alleges Defendant maliciously prosecuted him after the police violated his constitutional rights to arrest him. [ECF No. 1 at 4]. Plaintiff alleges Defendant “maliciously violated Brady and instructed justice by concealing and failing to disclose that the (3) three arrest warrants in this case were signed by a Rock Hill City Bond Bailiff, who committed perjury and

had no first hand knowledge of the content within the affidavits he signed.” [ECF No. 9 at 3]. Plaintiff further alleges Defendant “obstructed justice by intentionally cutting and mutilating evidence favorable to the Plaintiff from the body cam footage.” *Id.* Plaintiff’s amended complaint contains no request for relief, but his original complaint requested monetary damages. [ECF No. 1 at 4].

II. Discussion

A. Standard of Review

Plaintiff filed his complaint pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. To protect against possible abuses of this privilege, the statute allows a district court to dismiss a case upon a finding that the action fails to state a claim on which relief may be granted or is frivolous or malicious. 28 U.S.C. § 1915(e)(2)(B)(i), (ii). A finding of frivolity can be made where the complaint lacks an arguable basis either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992). A claim based on a meritless legal theory may be dismissed *sua sponte* under 28 U.S.C. § 1915(e)(2)(B). *See Neitzke v. Williams*, 490 U.S. 319, 327 (1989).

Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leekte*, 574 F.2d 1147, 1151 (4th Cir. 1978). A federal court is charged with liberally construing a complaint filed by a pro se

litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). In evaluating a pro se complaint, the plaintiff's allegations are assumed to be true. *Fine v. City of N.Y.*, 529 F.2d 70, 74 (2d Cir. 1975). 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 the plaintiff could prevail, it should do so. Nevertheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts that set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390–91 (4th Cir. 1990).

B. Analysis

1. Prosecutorial Immunity

Plaintiff sues Defendant for actions associated with the prosecution of his criminal charges. Prosecutors have absolute immunity for activities in or connected with judicial proceedings, such as a criminal trial, bond hearings, bail hearings, grand jury proceedings, and pretrial hearings. *See Buckley v. Fitzsimmons*, 509 U.S. 259 (1993); *Dababnah v. Keller-Burnside*, 208 F.3d 467 (4th Cir. 2000). Because Plaintiff's claims address actions allegedly taken by Defendant in connection with the judicial proceedings for his criminal charges, these claims are barred by prosecutorial immunity.

Accordingly, the undersigned recommends Defendant be summarily dismissed from this case.

2. Damages are Barred by *Heck*

Plaintiff's complaint seeks monetary damages related to the prosecution of his criminal charges. [ECF No. 1]. Such a claim is barred by the holding in *Heck v. Humphrey*, 512 U.S. 477 (1994). In *Heck*, the United States Supreme Court held that in order to recover damages for imprisonment in violation of the Constitution, the imprisonment must first be successfully challenged:

We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm 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 a determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983.

Id. at 486–87. When addressing a damages claim, “the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.” *Heck*, 512 U.S. at 487. This is known as the “favorable termination” requirement. *See Wilson v. Johnson*, 535 F.3d

262, 263 (4th Cir. 2008). Plaintiff fails to demonstrate or allege that he has successfully challenged his federal conviction. Accordingly, any claims he may be attempting to pursue based on his conviction or sentence are barred by *Heck*.

III. Conclusion and Recommendation

For the foregoing reasons, the undersigned recommends this matter be dismissed. As Plaintiff has had an opportunity to amend his complaint, the undersigned recommends the dismissal be with prejudice.

IT IS SO RECOMMENDED.

December 28, 2021
Columbia, South Carolina



Shiva V. Hodges
United States Magistrate Judge

The parties are directed to note the important information in the attached "Notice of Right to File Objections to Report and Recommendation."

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
901 Richland Street
Columbia, South Carolina 29201

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).