IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 23-10279-J

PATRICK TIMOTHY WYATT,

Plaintiff - Appellant,

versus

JON BOLLING WOOD,
HERBERT E. BUZZ FRANKLIN,
KIM WINDLE JAMES,
ATTORNEY GENERAL, STATE OF GEORGIA,

Defendants - Appellees.

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

ORDER OF DISMISSAL: Pursuant to the 11th Cir. R. 42-1(b), this appeal is hereby DISMISSED for want of prosecution because the Appellant Patrick Timothy Wyatt failed to file a motion for leave to proceed on appeal within the time fixed by the rules.

Effective April 17, 2023.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

FOR THE COURT - BY DIRECTION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

PATRICK TIMOTHY WYATT,

Plaintiff,

v.

JON BOLLING WOOD, et al.,

Defendants.

CIVIL ACTION FILE
NO. 4:22-CV-0246-HLM-WEJ

ORDER

This is a civil rights action filed under 42 U.S.C. § 1983 by a prisoner proceeding pro se. The case is before the Court on the Final Report and Recommendation of United States Magistrate Judge Walter E. Johnson [4] and on Plaintiff's Objections to the Final Report and Recommendation [6].

I. Standard of Review

28 U.S.C. § 636(b)(1) requires that in reviewing a magistrate judge's report and recommendation, the district court "shall make

a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). The Court "must make a de novo determination of those portions of a magistrate judge's report and recommendation to which an objection is made." Kohser v. Protective Life Corp., 649 F. App'x 774, 777 (11th Cir. 2016) (per curiam). "However, where a litigant fails to offer specific objections to a magistrate judge's factual findings, there is no requirement of de novo review." Id. "A specific objection must 'identify the portions of the proposed findings and recommendation to which objection is made and the specific basis for objection.'" Id. (quoting Heath v. Jones, 863 F.3d 815, 822 (11th Cir. 1989)). If no party files a timely objection to a factual finding in the report and recommendation, the Court reviews that finding for clear error. Macort v. Prem, Inc., 208 F. App'x 781, 784 (11th Cir. 2006) (per curiam). Legal conclusions, of course, are subject to de novo review even if no party specifically

objects. LeCroy v. McNeil, 397 F. App'x 554, 556 (11th Cir. 2010) (per curiam).

II. Discussion

On November 17, 2022, Judge Johnson issued his Final Report and Recommendation. (Final Report & Recommendation (Docket Entry No. 4).) Judge Johnson recommended that the Court dismiss this action for failure to state a claim for relief. (See generally id.)

Plaintiff filed Objections to the Final Report and Recommendation. (Objs. (Docket Entry No. 6).) The Court finds that the matter is ripe for resolution.

The Court agrees with Judge Johnson that Plaintiff's Complaint does not state viable claims for relief under § 1983. (Final Report & Recommendation at 3-5.) Nothing in Plaintiff's Objections warrants rejecting the Final Report and Recommendation. (Objs.) The Court therefore adopts the Final

Report and Recommendation, overrules Plaintiff's Objections, and dismisses Plaintiff's Complaint.

III. Conclusion

ACCORDINGLY, the Court **ADOPTS** the Final Report and Recommendation of United States Magistrate Judge Walter E. Johnson [4], **OVERRULES** Plaintiff's Objections to the Final Report and Recommendation [6], **DISMISSES** Plaintiff's Complaint for failure to state a claim for relief, and **DIRECTS** the Clerk to **CLOSE** this action.

IT IS SO ORDERED, this the 12th day of December, 2022.

/s/ Harold L. Murphy

SENIOR UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

PATRICK TIMOTHY WYATT, GDC No. 315848, Plaintiff pro se,	:	PRISONER CIVIL RIGHTS 42 U.S.C. § 1983
v.	:	
JON BOLLING WOOD, et al., Defendants.	:	CIVIL ACTION NO. 4:22-CV-246-HLM-WEJ

FINAL REPORT AND RECOMMENDATION

Plaintiff pro se, Patrick Timothy Wyatt, confined in Dooly State Prison in Unadilla, Georgia, submitted a Civil Rights Complaint Pursuant to 42 U.S.C. § 1983. (Compl. [1].) The Court granted plaintiff's request for leave to proceed in forma pauperis ("IFP") [3]. The matter is now before the Court for an initial screening under 28 U.S.C. § 1915A. For the reasons stated below, the undersigned **RECOMMENDS** that the Complaint be **DISMISSED**.

I. STANDARD OF REVIEW

The Court must screen a prisoner complaint against a governmental entity, officer, or employee and dismiss the complaint or any portion thereof if it (1) "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(a), (b)(1)-(2). A claim is frivolous when it "lacks an arguable basis either in law or in fact." Miller v. Donald, 541 F.3d 1091, 1100 (11th Cir. 2008) (quoting Neitzke v. Williams, 490 U.S. 319, 327 (1989)) (internal quotation marks omitted). A complaint fails to state a claim when the factual allegations, accepted as true, do not "raise a right to relief above the speculative level . . . ." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-56 (2007). A viable claim must be "plausible on its face." Id. at 570.

To satisfy the plausibility standard, the plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Twombly, 550 U.S. at 556). The Court construes the factual allegations favorably to a pro se plaintiff and holds pro se pleadings to "less stringent standards than formal pleadings drafted by lawyers . . . ." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)).

"To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that (1) the defendant deprived him of a right secured under the United States Constitution or federal law and (2) such deprivation occurred under color of state law." Richardson v. Johnson, 598 F.3d 734, 737 (11th Cir. 2010) (citing U.S. Steel, LLC v. Tieco,

Inc., 261 F.3d 1275, 1288 (11th Cir. 2001) and Arrington v. Cobb Cnty., 139 F.3d 865, 872 (11th Cir. 1998)).

II. DISCUSSION

Plaintiff brings this action against the following defendants: Chattooga County Superior Court Chief Judge Jon Bolling Wood and Clerk Kim Windle James; District Attorney Herbert E. "Buzz" Franklin; and Georgia Attorney General Chris Carr. (Compl. 2, 4, 5.) Plaintiff states that (1) he challenged his Chattooga County conviction by filing a "commercial affidavit of truth" and "summary judgment motion" with Clerk James in June and July 2022, (2) District Attorney Franklin and Attorney General Carr failed to respond to those filings, and (3) Chief Judge Wood has failed to issue a ruling. (Id. at 4, 6.) Plaintiff seeks injunctive relief, including release from confinement and criminal charges against defendants. (Id. at 6-7.)

Plaintiff may not obtain release from confinement in a § 1983 action. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973) (holding that habeas corpus is sole federal remedy for prisoner challenging fact or duration of confinement). Plaintiff may not obtain criminal charges against defendants. "It is well established that private citizens can neither bring a direct criminal action against another person nor can they petition the federal courts to compel the criminal prosecution of another

person." Ellen v. Stamm, 951 F.2d 359 (9th Cir. 1991) (unpublished table decision). "[A] private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973).

Chief Judge Wood is entitled to absolute immunity. See Mireles v. Waco, 502 U.S. 9, 11 (1991) (per curiam) ("[J]udicial immunity is an immunity from suit . . . ."). Plaintiff fails to allege facts showing that Clerk James violated his federal civil rights. Plaintiff may not sue District Attorney Franklin and Attorney General Carr for injunctive relief if "an adequate remedy at law" exists. See Bolin v. Story, 225 F.3d 1234, 1242 (11th Cir. 2000) (per curiam). Plaintiff may pursue the adequate legal remedy of a petition for a writ of habeas corpus in state court pursuant to O.C.G.A. § 9-14-1(c). Therefore, plaintiff's claims against Franklin and Carr fail. Plaintiff's claims are also barred by Heck v. Humphrey, 512 U.S. 477 (1994):

> [I]n order to [obtain relief] 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 . . . .

Id. at 486-87. Plaintiff does not show that his conviction or sentence has been reversed, expunged, declared invalid, or otherwise called into question. Plaintiff is

obligated to make that showing regardless of the relief he seeks or the defendants he targets. See Wilkinson v. Dotson, 544 U.S. 74, 81-82 (2005). Because plaintiff has not done so, Heck bars this action, and plaintiff cannot overcome that bar by filing an amended complaint. See Mims v. Anderson, 350 F. App'x 351, 353 (11th Cir. 2009) (per curiam). Accordingly, the Complaint should be dismissed.

III. CONCLUSION

For the reasons stated above, the undersigned **RECOMMENDS** that the Complaint [1] be **DISMISSED** pursuant to 28 U.S.C. § 1915A(b)(1).

The Clerk is **DIRECTED** to terminate the referral to the undersigned.

SO RECOMMENDED, this 17th day of November, 2022.

Walter E. Johnson

WALTER E. JOHNSON
UNITED STATES MAGISTRATE JUDGE