

UNPUBLISHED

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

No. 22-6630

BRUCE ALLEN BUCKNER,

Plaintiff - Appellant,

v.

RHPD SERGEANT CASTRO, Police Sergeant; RHPD OFFICER KUNDE, Police Officer; RHPD OFFICER ROBIN GANDER, Police Officer; RHPD OFFICER ANDREW HEMS, Police Officer; RHPD OFFICER JERRY SANDERS, Police Officer,

Defendants - Appellees.

and

ROCK HILL POLICE DEPARTMENT, in their official capacity,

Defendant.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. Terry L. Wooten, Senior District Judge. (0:20-cv-03253-TLW)

Submitted: October 13, 2022

Decided: October 18, 2022

Before NIEMEYER and AGEE, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Bruce Allen Buckner, Appellant Pro Se. Joshua Paul Golson, David Leon Morrison,
MORRISON LAW FIRM, LLC, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Bruce Allen Buckner appeals the district court's order and judgment accepting the recommendation of the magistrate judge and dismissing his civil rights complaint without prejudice. We have reviewed the record and find no reversible error. Accordingly, we affirm. *Buckner v. Sergeant Castro*, No. 0:20-cv-03253-TLW (D.S.C. May 9, 2022). We also deny Buckner's motions to clarify and vacate the order. 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

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

Bruce Allen Buckner,)	C/A No.: 0:20-3253-TLW-SVH
)	
Plaintiff,)	
)	
vs.)	
)	
)	
RHPD Sergeant Carsto, RHPD)	REPORT AND
Officer Kunde, RHPD Officer)	RECOMMENDATION
Andrew Hem, RHPD Officer Terry)	
Sanders, RHPD Officer Robin)	
Gander, each in his/her individual)	
and official capacities,)	
)	
Defendants.)	
)	

Bruce Allen Buckner ("Plaintiff"), proceeding pro se and in forma pauperis, brings this action pursuant to 42 U.S.C. § 1983 alleging violations of his Fourth and Fourteenth Amendment rights due to actions taken by Defendants on January 16, 2020, when they entered Plaintiff's hotel room, performed a search, and subsequently arrested him. Plaintiff additionally brings claims arising under South Carolina law, including for trespassing, conspiracy, and kidnapping.

All pretrial proceedings in this case were referred to the undersigned pursuant to 28 U.S.C. § 636(b) and Local Civ. Rule 73.02(B)(2)(e) (D.S.C.).

I. Factual and Procedural Background

Plaintiff alleges Defendants illegally entered and searched his hotel room on January 16, 2020, leading to his arrest the following day. [ECF No. 1, *see also* ECF No. 37-2]. Plaintiff was initially charged with multiple offenses, including two counts of possession with intent to distribute methamphetamine, two counts of possession with intent to distribute heroin, and one count of possession of a firearm by a person convicted of a violent crime. [ECF No. 37-2]. The York County grand jury returned the following true-billed indictments on November 12, 2020: 1) possession with intent to distribute heroin, 3rd or subsequent offense; 2) possession with intent to distribute methamphetamine; and 3) possession of a firearm by a person convicted of a violent offense. [ECF No. 99-1–3]. Plaintiff was tried on these charges in the Sixteenth Circuit Court of General Sessions the week beginning on May 24, 2021, and ultimately convicted on or about May 28, 2021, after a four-day trial. [ECF No. 99-4–6]. Plaintiff advises that his appeals have been denied. [ECF Nos. 87, 92].

On November 1, 2021, the undersigned issued an order directing Plaintiff to show cause why this case should not be dismissed as barred by *Heck v. Humphrey*, 512 U.S. 477 (1994).

II. Discussion

Defendants argue Plaintiff's claims for damages related to his arrest

and prosecution are barred by the United States Supreme Court's holding in *Heck*:

We hold that, in 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. 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. In addressing a claim for damages, “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.

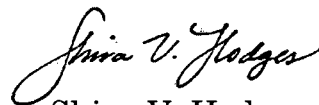
In response to the court's November 1, 2021 order directing Plaintiff to show cause why this case should not be dismissed as barred by *Heck*, Plaintiff argues (1) he has filed a habeas corpus petition; (2) he filed a brief to his habeas petition alleging constitutional violations; (3) his motion for summary judgment “supersedes all other actions in this case”; and (4) Defendants defaulted by not filing a timely response to the summons. [ECF No. 105]. Plaintiff fails to address *Heck*'s application to this case.

Plaintiff's response fails to provide any reason this case is not barred by *Heck*. Although Plaintiff may have filed a habeas petition, unless and until an order invalidates his convictions, his pursuit of a habeas action does not affect *Heck's* application in this § 1983 case. Additionally, Plaintiff's motion for summary judgment has already been denied in this case¹ and also does not change *Heck's* application. Similarly, Plaintiff's motion for a default judgment has already been denied, and it does not affect the application of *Heck*.

Because a ruling in Plaintiff's favor in this case would necessary invalidate his underlying conviction, his claims are barred by *Heck*. The undersigned therefore recommends this case be dismissed without prejudice.

IT IS SO RECOMMENDED.

November 16, 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."

¹ Although Plaintiff has filed a motion for reconsideration of the order denying his motion for summary judgment [ECF No. 93], the district judge has not yet ruled on it. Regardless, he cites no law for his argument that a filed motion for summary judgment "supersedes" any other action in this case.

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).

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Bruce Allen Buckner,

PLAINTIFF

v.

RHPD Sergeant Castro, RHPD Officer
Kunde, RHPD Officer Andrew Hem,
RHPD Officer Terry Sanders, RHPD
Officer Robin Gander, each in his/her
individual and official capacities,

DEFENDANTS.

Case No. 0:20-cv-3253-TLW

Order

Plaintiff Allen Buckner, proceeding pro se and in forma pauperis, alleging violations of his constitutional rights due to actions taken by Defendants on January 16, 2020, when they entered Plaintiff's hotel room, performed a search, and arrested him. ECF No. 1. 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. 107.

In the Report, the magistrate judge recommends that the Complaint be dismissed on grounds that Plaintiff's claims for damages related to his arrest and prosecution are barred by the United States Supreme Court's holding in *Heck v. Humphrey*, 512 U.S. 477 (1994). The *Heck* Court stated the following:

We hold that, in 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. 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.

On November 1, 2021, the magistrate judge issued an order directing Plaintiff to show cause by November 22, 2021, why Plaintiff's claims should not be dismissed as barred by *Heck*. ECF No. 100. Plaintiff failed to take the opportunity given to him to respond to the magistrate judge's order, ECF No. 100, at which point the magistrate judge issued the Report. Plaintiff then filed objections, but again failed to provide any reason this case is not barred by *Heck*. ECF No. 110. 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, particularly Plaintiff's failure to follow

the magistrate judge's order directing Plaintiff to show cause why this case should not be dismissed as barred by *Heck*, the Report is **ACCEPTED**. His objections are **OVERRULED**. His Complaint is hereby **DISMISSED WITHOUT PREJUDICE**.¹

IT IS SO ORDERED.

s/ Terry L. Wooten
Terry L. Wooten
Senior United States District Judge

May 9, 2022
Columbia, South Carolina

¹ The remaining outstanding motions, ECF Nos. 93, 116, 119, and 120 are hereby denied as moot.

FILED: November 22, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-6630
(0:20-cv-03253-TLW)

BRUCE ALLEN BUCKNER

Plaintiff - Appellant

v.

RHPD SERGEANT CARSTO, Police Sergeant; RHPD OFFICER KUNDE, Police Officer; RHPD OFFICER ROBIN GANDER, Police Officer; RHPD OFFICER ANDREW HEMS, Police Officer; RHPD OFFICER JERRY SANDERS, Police Officer

Defendants - Appellees

and

ROCK HILL POLICE DEPARTMENT, in their official capacity

Defendant

O R D E R

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Niemeyer, Judge Agee, and Senior Judge Keenan.

For the Court

/s/ Patricia S. Connor, Clerk

Morrison Law Firm, LLC

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David L. Morrison*

Kassi B. Sandifer

Robert G. Cooper**

Joshua P. Golson

*Licensed in SC & NC

*Certified Mediator

**Of Counsel

October 22, 2020

Bruce Allen Buckner, #36995A

York County Detention Center

1675-3A York Hwy

York, South Carolina 29745

RE: Bruce Allen Buckner v. Rock Hill Police Department ("RHPD"); RHPD Sergeant Carsto;
RHPD Officer Kunde; RHPD Officer Andrew Hems; RHPD Officer Jerry Sanders; and
RHPD Officer Robin Gander

C/A #: 0:20-cv-3253-TLW-SVH

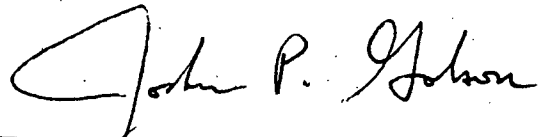
Our file: 420.0786

Dear Mr. Buckner:

Enclosed and served upon you is the filed Answer and 26.01 Interrogatory Responses on behalf of Defendants Carsto, Kunde, Hems, Sanders and Gander in the above-referenced matter. Also enclosed are the ECF filing documents for each.

Very truly yours,

MORRISON LAW FIRM, LLC



Joshua P. Golson

JPG/cmm

Enclosures

Discovery Documents

0:20-cv-03253-TLW-SVH B

Buckner v. Rock Hill Police Department

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SVH-Inmate

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered by Golson, Joshua on 10/22/2020 at 6:28 PM EDT and filed on 10/22/2020

Case Name: Buckner v. Rock Hill Police Department et al

Case Number: 0:20-cv-03253-TLW-SVH

Filer: Carsto
Robin Gander
Andrew Hems
Kunde
Terry Sanders

Document Number: 34

Docket Text:

Local Rule 26.01 Answers to Interrogatories by Carsto, Robin Gander, Andrew Hems, Kunde, Terry Sanders. (Attachments: # (1) Certificate of Service)(Golson, Joshua)

0:20-cv-03253-TLW-SVH Notice has been electronically mailed to:

David Leon Morrison david@dmorrison-law.com, callie@dmorrison-law.com, dlmtorts@aol.com

Joshua Paul Golson josh@dmorrison-law.com, callie@dmorrison-law.com

0:20-cv-03253-TLW-SVH Notice will not be electronically mailed to:

Bruce Allen Buckner
36995A
York County Detention Center
1675-3A York Hwy
York, SC 29745

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

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Document description:Certificate of Service

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1091130295 [Date=10/22/2020] [FileNumber=9878950-

18 of 18

MORRISON LAW FIRM, LLC
2453 Irmo Drive, Suite B
Columbia, South Carolina 29212

RECEIVED

OCT 29 2020

YORK COUNTY DETENTION CENTER
MAILROOM

Bruce Allen Buckner, #36995A
York County Detention Center
1675-3A York Hwy
York, South Carolina 29745

LEGAL - NOT OPENED



MAILED FROM 2020
JUE 29212

LEGAL - NOT OPENED

29745\$7497 R015

