NO.

IN THE

SUPREME COURT OF THE UNITED STATES

JACKIE RAY ROLLER, - PETITIONER

VS

CRYSTAL HOLLOWAY, RESPONDENTS et. al

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JACKIE RAY ROLLER, PRO SE
GDC# 675417
CALHOUN STATE PRISON
P.O. BOX 249
MORGAN, GEORGIA 39866
229 849-5000

QUESTIONS PRESENTED

I. DOES A "FEE PAID" PRO SE PETITIONER A STATE PRISONER HAVE A 1ST AND 14TH AMENDMENTS CONSTITUTIONAL RIGHT TO AMEND HIS DEFICIENT §1983 COMPLAINT DISMISSED FOR FAILURE TO STATE A CLAIM UNDER THE SCREENING PROVISIONS OF THE PRISON LITIGATION REFORM ACT (P.L.R.A) BEFORE A RESPONSIVE PLEADING IS FILED PURSUANT TO THE UNITED STATES CONSTITUTION, BANKS V PITT, 928 F2D 1108, 1112 (11TH CIR. 1991) MITCHELL V FARCASS, 112 F3D 1483, 1490-1493 (11TH CIR. 1997) BROWN V JOHNSON, 387 F3D 1344, 1348 (11TH CIR. 2004), WHEN THERE IS A CONFLICT IN THE COURT OF APPEALS ON THE SAME ISSUE IN McGORE V WRIGGLESWORTH, 114 F3D 601, 612 (6TH CIR. 1997) 28 U.S.C. §1915 (A)(e)(2)(B)(ii) FEDERAL RULES OF CIVIL PROCEDURE RULE 8(a)(1)(2)(3) RULE 15(a) PRISON LITIGATION REFORM ACT?

II. THIS CASE PRESENTS A FUNDAMENTAL QUESTION FOR THE COURT TO REVISIT THE DECISION IN FOMAN V DAVIS, 371 U.S. 178, 182, 183, 83 S.CT. 227 (1962) DOES A PRO SE "FEE PAID" PETITIONER HAVE A 1ST AND 14TH AMENDMENTS CONSTITUTIONAL RIGHT TO AMEND HIS DEFICIENT COMPLAINT UNDER THE UNITED STATES CONSTITUTION? THE QUESTION HAS GREAT IMPORTANCE TO PRO SE PETITIONERS FOR REASONS HE IS UNTRAINED IN THE LAW REQUIRES HIM TO BE ABLE TO AMEND HIS DEFICIENT CLAIMS IN THE §1983 COMPLAINT BEFORE A RESPONSIVE PLEADING IS FILED TO STATE A CLAIM UNDER THE PRISON LITIGATION REFORM ACT, (P.L.R.A) INITIAL SCREENING PROCEEDINGS BY THE DISTRICT COURT?

TABLE OF CONTENTS

	PAGES
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4,5
REASONS FOR GRANTING THE PETITION	6,7,8,9
CONCLUSIONS	10
PROOF OF SERVICE	11

TABLE OF AUTHORITIES

CASES	PAGES
BANKS V PITT, 928 F2D 1108, 1112 (11TH CIR. 1991)	ii, 5, 6
BROWN V JOHNSON, 387 F3D 1344, 1348 (11TH CIR. 2004)	ii, 6, 7
FOMAN V DAVIS, 371 U.S. 178, 182-183, 83 S.CT. 227 (1962)	i, ii, 8, 9
LEAL V GA. DEPT. OF CORR. 254 F3D 1276, 1278-1279 (11TH CIR. 2001)	5
LOPEZ V SMITH, 203 F3D 1122, 1127-1130, (9TH CIR. 200) EN BANC	ii, 7
MC GORE V WRIGGLEWORTH, 114 F3D 601, 612 (6TH CIR. 1997)	i, ii, 6
MITCHELL V FARCASS, 112 F3D 1483, 1490-1493 (11TH CIR. 1997	ii, 7

CONSTITUTIONAL PROVISIONS,	
UNITED STATES CONSTITUTION AMENDMENT I	3
UNITED STATES CONSTITUTION AMENDMENT XIV	3

STATUTES AND RULES	
28 U.S.C. § 1254(1)	iii, 2
28 U.S.C § 1915 (A)(e)(2)(B)(ii)	i, iii,
42 U.S.C. § 1983	7, 8
RULE 8 (a)(1)(2)(3) FEDERAL RULES OF CIVIL PROCEDURE	i
RULE 15(a) FEDERAL RULES OF CIVIL PROCEDURE	i, ii, 6, 9
OTHER	
PRISON LITIGATION REFORM ACT	i
HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT	i.

List of Parties

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows: Crystal Holloway, Carmen Geer, John Stroh, Pamela Ballinger, Jeannie Kasper, Scott Keith, Anna Whitten, Rene Langston, Ricky Foskey, James Smith, Timothy Ward, and Jackie Ray Roller

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

PETITIONER RESPECTFULLY PRAYS THAT A WRIT OF CERTIORARI ISSUE TO REVIEW THE JUDGEMENT BELOW.

OPINIONS BELOW

THE OPINION OF THE UNITED STATES COURT OF APPEALS APPEARS AT APPENDIX I TO THE PETITION AND IS UNPUBLISHED.

THE OPINION OF THE UNITED STATES COURT OF APPEALS APPEARS AT APPENDIX II (ENBANC) TO THE PETITION AND IS UNPUBLISHED, NO DECISION

THE OPINION OF THE UNITED STATES DISTRICT COURT APPEARS AT APPENDIX III TO THE PETITION AND IS REPORTED AT CASE NO. 4:21-0065 HLM

THE PETITIONERS AMENDED COMPLAINT SENT DIRECTLY TO THE UNITED STATES DISTRICT JUDGE HAROLD L. MURPHY, N.D.GA. APPEARS AT APPENDIX IV TO THE PETITION

JURISDICTION

THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS DECIDED MY CASE WAS JANUARY 10, 2023

A TIMELY PETITION FOR EN BANC REHEARING WAS TIMELY FILED IN MY CASE JANUARY 17, 2023 TO DATE NO DECISION

THE JURISDICTION OF THE COURT IS INVOKED UNDER 28 U.S.C § 1254(1)

THE CLERK OF THE COURT ON MARCH 10, 2023, A LETTER TO EXTEND THE FILING DATE BY 60 DAYS.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOCUED

UNITED STATES CONSTITUTION AMENDMENT I

THE FIRST AMENDMENT FORBIDE LAWS "ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS, OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITON THE GOUERNMENT FOR A REDRESS OF GRIEVANCES.

UNITED STATES CONSTITUTION AMENDMENT XIV

NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITES OF CITIZENS OF THE UNITED STATES, NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW, NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

STATEMENT OF THE CASE

THE PRO SE, PETITIONER FILED A COMPLAINT UNDER TITLE 42 U.S.C §1983, AFTER EXHAUSTING DISCIPLINARY APPEALS,

THE PETITIONER ALLEGED HE WAS CHARGED, TRIED, CONVICTED AND PUNISHED BY ALL OF THESE STATE PRISON OFFICIALS AT WALKER STATE PRISON, ROCKSPRING, GEORGIA AND GEORGIA DEPARTMENT OF CORRECTIONS BY AN UNCONSTITUTIONAL DISCIPLINARY PROCEEDINGS AND DISCIPLINARY APPEALS.

PETITIONER ALLEGED HE WAS ALONE IN SHOWER TALKING TO HIMSELF SPEAKING THE WORD "NIGGARD" TO PAY STATE APPEAL FEES TO THE CLERK OF THE TRIAL COURT AND STATE SUPREME COURT. HOWEVER, AN INMATE OVERHEARD PETITIONER AND THOUGHT HE HAD UTTERED A RACIAL SLUR.

THE PETITIONER WAS PLACED IN ISOLATION GIVEN (2) DISCIPLINARY REPORTS WHICH WERE FALSE WITHOUT JUSTIFICATION, ON THE FACTS, BECAUSE THE "N-WORD", THE "NIGGER" WORD, AND THE "RACIAL SLUR" DEFINITION IS "NOT" DEFINED IN THE MERRIAM-WEBSTER DICTIONARY AND OXFORD DICTIONARY. THE RESPONDENTS B-12 DISCIPLINARY INFRACTION CODE DOES "NOT" HAVE A LIST OF PROHIBITED WORDS IN THE GEORGIA DEPARTMENT OF CORRECTIONS STANDARD OPERATING PROCEDURES.

THE RESPONDENTS TRIED PETITIONER ON THE "FALSE DISCIPLINARY CHARGES", REFUSED TO PROVIDE HIM WITNESS STATEMENTS AND THE

THE DISCIPLINARY HEARING OFFICER REFUSED TO PROVIDE A COPY OF THE LIST OF PROHIBITED WORDS OF THE B-12 OBSCENE WORDS DISCIPLINARY INFRACTION CODE AND SENTENCED HIM TO 14 DAYS ISOLATION 7 DAYS WITHOUT PROPERTY.

RESPONDENTS RETALIATED AGAINST THE PETITIONER TO UNDERGO THREE MENTAL HEALTH INVESTIGATIVE EXAMINATIONS TO LABEL HIM A RACIST, DENIED PAROLE, AND VERBALLY THREATENED WHICH VIOLATED IN PART HIS SUBSTANTIVE DUE PROCESS OF LAW RIGHTS TO PRIVACY UNDER THE UNITED STATES CONSTITUTION, 14TH AMENDMENT, STATE LAWS AND THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT, HIPPA. APPENDIX IV

THE MAGISTRATE COURT DENIED PETITIONER IN FORMA PAUPERIS STATUS AND ORDERED HIM TO PAY THE FULL FILING FEES AND COSTS, AND THE FINAL REPORT AND RECOMMENDATION DISMISSED HIS COMPLAINT USING THE WRONG STANDARD OF REVIEW. THE DISTRICT COURT OVERRULED PETITIONER'S WRITTEN OBJECTIONS AND DISMISSED THE COMPLAINT USING THE WRONG STANDARD OF REVIEW, RATHER THAN THE PRISON LITIGATION REFORM ACT WHICH GOVERNS PRO SE PRISONERS COMPLAINTS FOR FAILURE TO STATE A CLAIM IN THE MAY 24, 2023 ORDER. APPENDIX III APPENDIX IV.

PETITIONER FILED A TIMELY NOTICE OF APPEAL. THE COURT OF APPEALS, ELEVENTH CIRCUIT AFFIRMED THE DISMISSAL OF THE COMPLAINT 28 U.S.C. § 1915(A)(B)(1) CITING RULE 12(b) LEAL V GA. DEPT. OF CORR, 254 F3D 1276, 78-79 (11TH CIR. 2001) APPENDIX I, USING THE WRONG STANDARD OF REVIEW WITHOUT ALLOWING THE PETITIONERS RIGHT TO AMEND HIS COMPLAINT ALLEGED IN THE WRITTEN OBJECTIONS, TO THE MAGISTRATES REPORT AND RECOMMENDATION. APPENDIX II APPENDIX IV. BANK V PITT, 928F2D 1108, 1112 (11TH CIR. 1997)

REASONS TO GRANT THE PETITION

A. CONFLICTS WITH DECISIONS IN THE COURT OF APPEALS.

THERE IS A CONFLICT BETWEEN THE COURT OF APPEALS, SIXTH CIRCUIT IN McGORE V WRIGGLEWORTH, 114 F3D 601, 612 (6TH CIR. 1997) THE COURT HELD: "UNDER THE PRISON LITIGATION REFORM ACT THE DISTRICT COURTS HAVE NO DISCRETION IN PERMITTING A PLAINTIFF TO AMEND A COMPLAINT TO AVOID A SUA SPONTE DISMISSAL. IF A COMPLAINT FALLS WITHIN THE REQUIREMENTS OF §1915(e)(2) WHEN FILED, THE DISTRICT COURT SHOULD SUA SPONTE DISMISS THE COMPLAINT. SECTION 1915(A) ALSO PROVIDES FOR SUCH SUA SPONTE DISMISSALS." ID AT 612 AND BAXTER V ROSE, 305 F3D 486, 489 (6TH CIR. 2002)

AND, THE COURT OF APPEALS, ELEVENTH CIRCUIT IN BANK V PITT, 928 F2D 1108, 1112 (11TH CIR. 1991) THE COURT HELD: "A COMPLAINT SHOULD NOT BE DISMISSED UNDER RULE 12 UNLESS IT APPEARS BEYOND DOUBT THAT THE PLAINTIFF CAN PROVE NO SET OF FACTS IN SUPPORT OF HIS CLAIM WHICH WOULD ENTITLE HIM TO RELIEF, CONLEY V GIBSON, 355 U.S. 41, 45-46, 78 S.CT 99, 102 (1957) A DISTRICT COURTS DISCRETION TO DISMISS A COMPLAINT WITHOUT LEAVE TO AMEND IS SEVERELY RESTRICTED BY FED. R. CIV. P. 15(a) WHICH DIRECTS THAT LEAVE TO AMEND "SHALL BE FREELY GIVEN WHEN JUSTICE SO REQUIRES" THOMAS V TOWN OF DAVIE, 847 F2D 771, 773 (11TH CIR. 1988) WHERE IT APPEARS A MORE CAREFULLY DRAFTED COMPLAINT MIGHT STATE A CLAIM FOR RELIEF TO BE GRANTED. WE HAVE HELD THAT A DISTRICT COURT SHOULD GIVE A PLAINTIFF AN OPPORTUNITY TO AMEND HIS COMPLAINT INSTEAD OF DISMISSING IT. FRIEDLANDER V MIMS, 735 F2D 810, 813 (11TH CIR. 1985) THIS IS STILL TRUE WHERE A PLAINTIFF DOES NOT SEEK LEAVE UNTIL AFTER THE DISTRICT COURT RENDERS FINAL JUDGEMENT. THOMAS, 847 F2D AT 773. WE REVERSE THE DISTRICT COURTS DISMISSAL OF THE ACTION AND REMAND WITH INSTRUCTIONS TO GRANT THE BANKS LEAVE TO AMEND."

THE COURT OF APPEALS, ELEVENTH CIRCUITS MORE RELENT DECISION IN BROWN V JOHNSON, 387 F3D 1344, 1348 (11TH CIR. 2004) THE COURT HELD:

"UNDER FEDERAL RULES OF CIVIL PROCEDURE 15(a) A PARTY MAY AMEND A COMPLAINT "ONCE AS A MATTER OF COURSE AT ANYTIME BEFORE A RESPONSIVE PLEADING IS SERVED, FED. R. CIV. P. 15(a)"

"THIS COURT HAS PREVIOUSLY DETERMINED THAT SECTION 1915 (e)(2)(B)(ii) DOES NOT ALLOW THE DISTRICT COURT TO DISMISS AN IN FORMA PAUPERIS COMPLAINT WITHOUT ALLOWING LEAVE TO AMEND WHEN REQUIRED BY FED. R. CIV. P. 15" TROVILLE V VENZ, 303 F3D 1256, 1260 N.5 (11TH CIR. 2002) "NOTHING IN THE LANGUAGE OF SECTIONS 1915(g) AND 1915A DIFFERS FROM SECTION 1915 (e)(2)(B)(ii) SUCH THAT THE COURT SHOULD NOT ALLOW PRISONERS THE SAME BENEFIT OF RULE 15(a) AS ANY OTHER LITIGANT" "THE PRISON LITIGATION REFORM ACT DOES NOT REPEAL THE FED. R. CIV. P. 15(a) SEE ALSO GOMEZ V U.S.A.A. FED. SAV. BANK, 171 F3D 794, 795-6 (2ND CIR. 1999)

IN VIEW OF THE FACTS, THE MAGISTRATE'S FINAL REPORT AND RECOMMENDATION DISMISSED PETITIONER'S COMPLAINT, HOWEVER THE PETITIONER FILED TIMELY "WRITTEN OBJECTIONS" TO REQUEST LEAVE TO AMEND THE COMPLAINT BEFORE DISMISSAL. THE DISTRICT COURT OVERRULED PETITIONER'S "WRITTEN OBJECTIONS" AND DISMISSED HIS COMPLAINT WHICH WAS CONTRARY TO THE ELEVENTH CIRCUIT, COURT OF APPEALS "BANKS" AND "BROWN" DECISIONS.

THE COURT OF APPEALS, ELEVENTH CIRCUIT IN MITCHELL V FARCASS, 112 F3D 1483, 1492 (11TH CIR. 1997) THE COURT HELD: "THE SCREENING PROVISIONS DO VIOLATE EQUAL PROTECTION AND THE RIGHT TO ACCESS TO THE COURTS IN IN FORMA PAUPERIS CASES. SEE (CONCURRING OPINION J. LAY)

THE SCREENING PROVISIONS OF THE PRISON LITIGATION REFORM ACT UNCONSTITUTIONALLY ALLOWS THE DISTRICT COURTS TO SUA SPONTE DISMISS PETITIONER'S COMPLAINT FOR FAILURE TO STATE A CLAIM, WITHOUT ALLOWING HIM TO AMEND THE DEFICIENT CLAIMS IN THE COMPLAINT BEFORE A RESPONSIVE PLEADING IS FILED.

THE PROSE PETITIONER NEEDS SOME GUIDANCE FROM THE COURT WHEN THE LOWER COURT DECISIONS "CONFLICT" ON THE SAME ISSUE. PETITIONER HAS A 1ST AND 14TH AMENDMENT CONSTITUTIONAL RIGHT TO AMEND HIS COMPLAINT.

B. IMPORTANCE OF QUESTIONS PRESENTED.

THIS CASE PRESENTS A FUNDAMENTAL QUESTION FOR THE COURT TO REVISIT THE DECISION IN FOMAN V DAVIS, 371 U.S. 128, 182, 183, 83 S.Ct. 227 (1962)

THE FEDERAL RULES OF CIVIL PROCEDURE GOVERNS A PRO SE PARTY "MAY AMEND A COMPLAINT ONCE AS A MATTER OF COURSE AT ANYTIME BEFORE A RESPONSIVE PLEADING IS FILED. - RULE 15(a)"

HOWEVER, THE "FOMAN" DECISION DOES "NOT" ESTABLISH A PARTY'S CONSTITUTIONAL RIGHT TO AMEND THE COMPLAINT UNDER THE 1ST AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

THIS CASE PRESENTS THE FUNDAMENTAL QUESTION DOES A "FEE PAID" PETITIONER A STATE PRISONER HAVE A 1ST AND 14 AMENDMENT CONSTITUTIONAL RIGHT TO AMEND HIS DEFICIENT COMPLAINT UNDER THE UNITED STATES CONSTITUTION AND THE PRISON LITIGATION REFORM ACT. (P.L.R.A)?

THE QUESTION PRESENTED IS OF GREAT PUBLIC IMPORTANCE BECAUSE IT AFFECTS THE CONSTITUTIONAL RIGHTS OF EVERY PRO SE "FEE PAID" PETITIONER, AND IN FORMA PAUPERIS PRO SE PETITIONER, AS WELL AS PERSONS ACTING PRO SE WHO FILE § 1983 COMPLAINTS IN AND OUTSIDE OF STATE PRISONS IN ALL 50 STATES.

IN VIEW OF THE LARGE AMOUNTS OF LITIGATION WHICH INVOLVES

UNCONSTITUTIONAL PRISON DISCIPLINARY PROCEEDINGS WITH THE MANY CHANGES IN THE LAW BOTH IN STATE AND FEDERAL LAW, IT IS OF GREAT PUBLIC IMPORTANCE FOR A PRO SE STATE PRISONER WHO IS UNTRAINED IN THE LAW REQUIRES HIM TO BE ABLE TO AMEND HIS DEFICIENT CLAIMS TO MAKE LEGALLY SUFFICIENT CLAIMS BEFORE A RESPONSIVE PLEADING IS SERVED BY THE RESPONDENTS ATTORNEY, AND TO STATE A CLAIM FOR RELIEF TO BE GRANTED UNDER THE PRISON LITIGATION REFORM ACT, DURING THE INITIAL SCREENINGS OF THE COMPLAINT BY THE DISTRICT COURT.

MOST IMPORTANTLY, IT AFFECTS A PRO SE STATE PRISONER'S § 1983 COMPLAINT THAT MAY RESULT IN MONTHS OR YEARS OF ADDED INCARCERATION OR HARSH PUNITIVE CONFINEMENT BY THE RESPONDENTS UNCONSTITUTIONAL DISCIPLINARY PROCEEDINGS WHO HE MUST TURN TO THE COURTS TO EXPUNGE UNLAWFUL DISCIPLINARY CONVICTIONS.

TO STATE A CLAIM A PRO SE STATE PRISONER FOR EXAMPLE, MUST MEET THE "PLAUSIBILITY REQUIREMENTS" WITH CHANGES TO THE CONSTITUTIONAL LAW HIS PLEADINGS CALLS FOR ENOUGH FACTS TO RAISE A REASONABLE EXPECTATION THAT DISCOVERY WILL REVEAL EVIDENCE OF THE NECESSARY ELEMENTS.

THE § 1983 COMPLAINT NOW MUST GIVE THE DISTRICT COURT REASON TO BELIEVE THAT PETITIONER ACTING PRO SE HAS A REASONABLE LIKELIHOOD OF MUSTERING FACTUAL SUPPORT FOR THESE CLAIMS. TO MEET THE LEGAL THEORIES TO HAVE MERIT NOW REQUIRES THE PRO SE PETITIONER MUST BE ABLE TO AMEND HIS COMPLAINT AS A MATTER OF RIGHT UNDER THE CONSTITUTION.

Conclusion

Wherefore, the Petitioner prays for the Court to issue a writ of certiorari to review the Court of Appeals Eleventh Circuit opinion.

This 4th day of April, 2023

Respectfully Submitted

Jackie Ray Roller
GDC# 675-417
Calhoun State Prison
P.O. Box 249
Morgan, Georgia 39866
229 849-5000

[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 22-12012

Non-Argument Calendar

JACKIE RAY ROLLER,

Plaintiff-Appellant,

versus

CRYSTAL HOLLOWAY,
PAMELA BALLINGER,
JEANIE KASPER,
JOHN STROH,
CARMEN GEER, et al.,

Defendants-Appellees.

APPENDIX I

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 4:21-cv-00065-HLM

Before LUCK, BRASHER, and EDMONDSON, Circuit Judges.

PER CURIAM:

Jackie Roller, a Georgia prisoner proceeding *pro se*, appeals the district court's *sua sponte* dismissal -- for failure to state a claim pursuant to 28 U.S.C. § 1915A -- of his *pro se* 42 U.S.C. § 1983 complaint.[1] No reversible error has been shown; we affirm.

I.

Roller filed *pro se* this civil action against eleven prison officials at the Walker State Prison in Rock Spring, Georgia. Construed liberally, Roller's complaint purported to assert claims for violations of the First, Fifth, Eighth, and Fourteenth Amendments arising from an incident that occurred in July 2020.

Roller's complaint alleges these facts. While talking aloud to himself in the shower, Roller said the term "niggard": a word Roller says he used to refer to himself having to pay filing fees in an unspecified state-court action. A fellow inmate overheard

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[1] We read liberally briefs filed by *pro se* litigants. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008). We also construe liberally *pro se* pleadings. *See Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).

Roller and -- believing Roller had uttered a racial slur -- reported Roller to prison officials.

Prison officials placed Roller in a "restrictive-segregation-isolation" unit. Roller later received a disciplinary report charging him with using a racial slur. The disciplinary report also cited to ten inmate witness statements about the incident.

Roller attended a disciplinary hearing on 16 July 2020. At the conclusion of the hearing, the hearing officer found Roller guilty of the charged disciplinary offense. Roller was sentenced to 14 days in isolation. During his period of isolation, Roller was denied his daily hour of recreational yard time.

The magistrate judge conducted an initial screening of Roller's complaint, as required by the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915A. The magistrate judge issued a report and recommendation ("R&R"), recommending that the complaint be dismissed for failure to state a claim.

Roller objected to the R&R. The district court overruled Roller's objections, adopted the R&R, and dismissed Roller's complaint. This appeal followed.

II.

We review *de novo* a district court's *sua sponte* dismissal under section 1915A(b)(1) for failure to state a claim, applying the same standards that govern dismissals under Fed. R. Civ. P. 12(b)(6). *See Leal v. Ga. Dep't of Corr.*, 254 F.3d 1276, 1278-79 (11th Cir. 2001). We view the complaint in the light most favorable

to the plaintiff, accepting the fact allegations in the complaint as true. *See Dimanche v. Brown*, 783 F.3d 1204, 1214 (11th Cir. 2015).

To survive dismissal, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotations omitted). To state a plausible claim for relief, plaintiffs must offer "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678.

As an initial matter, Roller has abandoned his claim alleging a double-jeopardy violation under the Fifth Amendment and his claims alleging equal-protection and substantive-due-process violations under the Fourteenth Amendment. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681-83 (11th Cir. 2014) ("[A]n appellant abandons a claim when he either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority."); *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) ("While we read brief filed by *pro se* litigants liberally, issues not briefed on appeal by a *pro se* litigant are deemed abandoned." (citations omitted)). We also need not address Roller's argument -- raised for the first time on appeal -- asserting a violation of his right to privacy under the Health Insurance

Portability and Accountability Act of 1996. *See Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1331 (11th Cir. 2004) ("[A]n issue not raised in the district court and raised for the first time in an appeal will not be considered by this court.").

A. Eighth Amendment

Roller challenges the district court's dismissal of his claim for relief under the Eighth Amendment. Roller says he was subjected to cruel and unusual punishment when he was denied outside recreational time during his 18 total days of isolation. Roller also contends that -- by wrongfully labeling Roller a "racist" -- prison officials exposed Roller to potential future bodily harm by other inmates.

To state a claim under the Eighth Amendment, a prisoner must allege facts sufficient to demonstrate two things: (1) an "objectively, 'sufficiently serious'" deprivation, and (2) that the prison official acted with a "sufficiently culpable state of mind." *See Farmer v. Brennan*, 511 U.S. 825, 834 (1994). "[A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.* at 837.

"In the context of an inmate's conditions of confinement after incarceration, the standard is that prison officials violate the

Eighth Amendment through 'unnecessary and wanton infliction of pain.'" *Bass v. Perrin*, 170 F.3d 1312, 1316 (11th Cir. 1999). We have acknowledged that the deprivation "of all outdoor exercise time" can amount to an "infliction of pain." *See id.* But a deprivation of outdoor time is neither "unnecessary" nor "wanton" when a "penological reason" exists for assigning a prisoner to solitary confinement and when prison officials are not deliberately indifferent to "a substantial risk of serious harm to a prisoner." *Id.* at 1316-17.

Here, Roller has failed to allege facts showing that his being deprived of outdoor recreation time constituted an "unnecessary and wanton infliction of pain" rising to the level of an Eighth Amendment violation. Roller's temporary placement in isolation was supported by a penological justification: Roller was found guilty of violating the prison's rules prohibiting the use of racial slurs. Furthermore, Roller has alleged no facts sufficient to demonstrate that prison officials were deliberately indifferent to a known substantial risk of serious harm to Roller arising from the 18-day restriction on outdoor recreation time.

Roller has also failed to state a plausible Eighth Amendment claim based on his purported potential exposure to future physical harm. Roller alleges no facts to support his speculative assertion that he will be targeted for violence by other inmates. Nor has Roller alleged facts sufficient to show that prison officials -- in disciplining Roller -- acted with deliberate indifference to a known substantial risk that Roller would suffer serious physical harm in

the future. To the contrary, disciplining prisoners for violating prison rules is often necessary for prison officials to maintain order and to ensure prisoner safety. *Cf. United States v. Mayes*, 158 F.3d 1215, 1224 (11th Cir. 1998) (recognizing that the government's interest in maintaining order and in preventing violent altercations among prisoners requires "punishing individuals for violent or other disruptive conduct" (quotations omitted)).

B. Fourteenth Amendment Due Process

The district court dismissed properly Roller's procedural-due-process claim under the Fourteenth Amendment. Roller contends that he was denied procedural due process because the prison's disciplinary policy on obscene language was unduly vague, the disciplinary report reflected an incorrect date and time of the incident, and because Roller was denied copies or summaries of the pertinent witness statements.

To state a claim for violation of procedural due process, a plaintiff must allege facts showing "(1) a deprivation of a constitutionally-protected liberty or property interest; (2) state action; and (3) constitutionally-inadequate process." *See Arrington v. Helms*, 438 F.3d 1336, 1347 (11th Cir. 2006). In the context of prison disciplinary proceedings, a prisoner has no liberty interest to which due process attaches unless he can demonstrate that he suffered an "atypical and significant hardship . . . in relation to the ordinary incidents of prison life." *See Sandin v. Conner*, 515 U.S. 472, 484-86 (1995).

Roller has failed to allege facts sufficient to demonstrate that being placed in isolation for 18 days caused him to suffer an atypical and significant hardship. *See id.* (concluding that a prisoner had no liberty interest protecting against a 30-day disciplinary assignment to segregated confinement because the confinement did not "present a dramatic departure from the basic conditions of [the inmate's] sentence"); *Rodgers v. Singletary*, 142 F.3d 1252, 1252-53 (11th Cir. 1998) (concluding that placement in administrative confinement for two months does not present the type of atypical, significant deprivation that might create a constitutionally-protected liberty interest). Because Roller has shown no constitutionally-protected liberty interest, he can state no claim for relief based upon the alleged inadequacies of the prison's disciplinary process.

C. First Amendment Retaliation

"The First Amendment forbids prison officials from retaliating against prisoners for exercising the right of free speech." *See Farrow v. West*, 320 F.3d 1235, 1248 (11th Cir. 2003). To state a viable First Amendment retaliation claim, a plaintiff must allege facts sufficient to establish: (1) that he engaged in constitutionally-protected speech; (2) that he was subjected to "retaliatory conduct . . . likely to deter a person or ordinary firmness from engaging in such speech"; and (3) that a causal connection exists between the retaliatory conduct and the protected speech. *See Smith v. Mosley*, 532 F.3d 1270, 1276 (11th Cir. 2008). To establish a causal connection, a prisoner must demonstrate prison officials were motivated subjectively by the prisoner's protected speech. *See id.* at 1278.

Roller contends that he was disciplined in retaliation for exercising his right to petition the government: his use of the word "niggard" while complaining aloud to himself about having to pay fees in his state-court action. But Roller has failed to allege facts establishing plausibly a causal connection between these complaints and the discipline he received. Never has Roller alleged that prison officials understood Roller's use of the word "niggard" as a complaint related to Roller's state-court proceedings. To the contrary, prison officials disciplined Roller based on a determination that Roller's speech constituted a racial slur prohibited by prison rules.[2] Roller cannot show that prison officials were motivated subjectively by Roller's supposed complaints about having to pay state-court fees. The district court committed no error in concluding that Roller failed to state a claim for retaliation under the First Amendment.

D. Leave to Amend

We reject Roller's assertion that the district court erred in dismissing his complaint without first granting him leave to amend. Generally speaking -- "[w]here a more carefully drafted complaint might state a claim" -- a *pro se* plaintiff "must be given at least one chance to amend the complaint before the district court

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[2] That a prisoner's use of a prohibited racial slur constitutes no constitutionally-protected speech is undisputed. *See Smith*, 532 F.3d at 1277 (noting that, "if a prisoner violates a legitimate prison regulation, he is not engaged in 'protected conduct'").

dismisses the action with prejudice." *See Bank v. Pitt*, 928 F.2d 1108, 1112 (11th Cir. 1991), *overruled in part by Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541, 542 & n.1 (11th Cir. 2002) (*en banc*) (holding that the rule in *Bank* does not apply to counseled plaintiffs). This rule applies even when -- as in this case -- the plaintiff never seeks leave to amend the complaint in the district court. *See id.*

Roller contends -- without elaboration -- that the district court should have granted him leave to amend. Roller offers no details about what proposed amendments he would make. Instead, Roller reiterates the same factual allegations and arguments asserted in his initial complaint. Given the factual allegations and claims involved in this case, we are unpersuaded that "a more carefully drafted complaint might state a claim." The district court committed no error in concluding that Roller's complaint was subject to dismissal for failing to state a claim upon which relief could be granted.

AFFIRMED.

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

JACKIE RAY ROLLER, GDC No. 675417, Plaintiff pro se,	:	PRISONER CIVIL RIGHTS 42 U.S.C. § 1983
v.	:	
CRYSTAL HOLLOWAY, et al., Defendants.	:	CIVIL ACTION NO. 4:21-CV-65-HLM-WEJ

FINAL REPORT AND RECOMMENDATION

Plaintiff pro se, Jackie Ray Roller, confined in Walker State Prison in Rock Spring, Georgia, submitted a Civil Rights Complaint Pursuant to 42 U.S.C. § 1983. (Compl. [1].) Plaintiff paid the $350.00 filing fee and $52.00 administrative fee. The matter is 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.

In order 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: Officer Crystal Holloway; Wardens Pamela Ballinger and Jeanie Kasper; Lieutenant John Stroh; Sergeant Carmen Geer; Captain Scott Keith; Counselor Anna Whitten; Disciplinary Investigator Rene Langston; Disciplinary Appeals Officer Ricky H. Foskey; Special Agent James Smith; and Commissioner Timothy Ward. (Compl. 1, 3-6.) Plaintiff states that he "was alone taking a shower in dorm 5, talking to himself, speaking the word 'niggard' for plaintiff to pay the state appeal filing fees in the state Supreme Court," on July 4, 2020. (Id. at 6-7.) However, an inmate overheard plaintiff and thought that he had uttered a racial slur. (Id. at 7.) Plaintiff was placed in isolation and given a disciplinary report on July 5, 2020. (Id.) On July 8, 2020, plaintiff received a revised disciplinary report, which (1) charged him with uttering a racial slur "several times," and (2) cited ten inmate witness statements that were not given to plaintiff. (Id. at 8-10.) On July 16, 2020, Captain Keith read two of the inmate witness statements at plaintiff's disciplinary hearing and found him guilty. (Id. at 10-11.) Captain Keith sentenced plaintiff to fourteen days of isolation, including seven days without access to his property. (Id. at 11.)

On July 22, 2020, plaintiff was released from isolation. (Id.) He filed a disciplinary appeal, which Warden Ballinger denied on July 27, 2020. (Id. at 12.) Plaintiff's appeal to Commissioner Ward was denied on September 10, 2020. (Id.) Plaintiff claims that the disciplinary proceeding violated his constitutional rights. (Id. at 13-28.) He seeks declaratory, injunctive, and monetary relief. (Id. at 4-5, 28-32.)

"The Due Process Clause offers two different kinds of constitutional protection: procedural due process and substantive due process, and a violation of either may form the basis for a suit under § 1983." Slakman v. Buckner, 434 F. App'x 872, 875 (11th Cir. 2011) (per curiam). "To establish a procedural due process claim under § 1983, a plaintiff must show: (1) a deprivation of a constitutionally protected liberty or property interest, (2) state action, and (3) constitutionally inadequate process." Bryant v. Ruvin, 477 F. App'x 605, 607 (11th Cir. 2012) (per curiam). A substantive due process claim under § 1983 involves "[o]nly the most egregious official conduct" that is arbitrary or shocks the conscience. Slakman, 434 F. App'x at 875 (quoting Waddell v. Hendry Cnty. Sheriff's Off., 329 F.3d 1300, 1305 (11th Cir. 2003)). "To state an equal protection claim under § 1983, a plaintiff must allege that (1) he is similarly situated with other prisoners who received more favorable treatment; and (2) his discriminatory

treatment was based on a constitutionally protected interest, such as race." Id. at 876.

"[A] prison official violates the Eighth Amendment only when two requirements are met. First, the deprivation alleged must be, objectively, sufficiently serious . . . ; a prison official's act or omission must result in the denial of the minimal civilized measure of life's necessities," which includes food, clothing, shelter, medical care, and a safe environment. Farmer v. Brennan, 511 U.S. 825, 832, 834 (1994) (citations and internal quotation marks omitted). Second, "a prison official must have a sufficiently culpable state of mind," namely, "deliberate indifference to inmate health or safety." Id. at 834 (citations and internal quotation marks omitted).

In the present case, plaintiff's procedural due process claim is frivolous because prisoners do not have a constitutional right to be housed in a particular section of a facility. See Olim v. Wakinekona, 461 U.S. 238, 244-46 (1983); Moody v. Daggett, 429 U.S. 78, 88 n.9 (1976); Meachum v. Fano, 427 U.S. 215, 223-25 (1976). Plaintiff's eighteen days in isolation did not constitute an "atypical and significant hardship" sufficient to establish a Fourteenth Amendment liberty interest. Sandin v. Conner, 515 U.S. 472, 484 (1995). Plaintiff's time in isolation was also not "objectively, sufficiently serious" to establish an Eighth Amendment

violation. See Farmer, 511 U.S. at 834. Plaintiff's substantive due process claim is frivolous because his allegations do not show egregious or conscience-shocking official conduct. See Slakman, 434 F. App'x at 875. Plaintiff fails to state an equal protection claim because the Complaint does not show that (1) he is similarly situated with other specific inmates who received more favorable treatment, and (2) his treatment is based on a constitutionally protected interest. Id. at 876.

Plaintiff also claims that defendants retaliated against him. (Compl. 13-15, 20-21.) The elements of a retaliation claim are (1) constitutionally protected speech, (2) an adverse effect on that speech by retaliatory conduct, and (3) a causal connection between the adverse effect and retaliatory conduct. See Douglas v. Yates, 535 F.3d 1316, 1321 (11th Cir. 2008). "The causal connection inquiry asks whether the defendants were subjectively motivated to discipline because [plaintiff] complained of some of the conditions of his confinement." Smith v. Mosley, 532 F.3d 1270, 1278 (11th Cir. 2008). In the present case, plaintiff's retaliation claim is frivolous because he alleges that defendants falsely disciplined him for uttering a racial slur, not for complaining about his confinement. "The mere assertion of a false or unproven disciplinary infraction does not alone amount to a constitutional violation." McKissick v. Deal, No. 5:14-cv-72-MTT, 2014 WL

2170977, at *2 (M.D. Ga. May 23, 2014) (citing Rodgers v. Singletary, 142 F.3d 1252 (11th Cir. 1998)).

Finally, plaintiff claims that defendants placed him in double jeopardy. (Compl. 13-17.) However, "[t]he Double Jeopardy Clause does not apply to proceedings that are not 'essentially criminal.' . . . Prison disciplinary proceedings are not part of a criminal prosecution." Garland v. Barfield, No. 3:08-cv-261-RV-EMT, 2009 WL 22283, at *2 (N.D. Fla. Jan. 2, 2009) (citations omitted). 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 9th day of May, 2022.

Walter E. Johnson

WALTER E. JOHNSON
UNITED STATES MAGISTRATE JUDGE

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

JACKIE RAY ROLLER,

Plaintiff,

v.

CRYSTAL HOLLOWAY, et al.,

Defendants.

CIVIL ACTION FILE
NO. 4:21-CV-0065-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 [14] and on Plaintiff's Objections to the Final Report and Recommendation [18].

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

APPENDIX III

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 May 9, 2022, Judge Johnson issued his Final Report and Recommendation. (Final Report & Recommendation (Docket Entry No. 14).) 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 Order and Final Report and Recommendation. (Objs. (Docket Entry No. 18).) The Court finds that the matter is ripe for resolution.

The Court agrees with Judge Johnson that Plaintiff's Complaint does not state viable § 1983 claims. (Final Report & Recommendation at 1-7.) First, Plaintiff does not state a procedural due process claim "because prisoners do not have a constitutional right to be housed in a particular section of a facility," and spending eighteen days in isolation is not sufficient to establish

a violation of Plaintiff's Fourteenth Amendment liberty interest or an Eighth Amendment violation. (Id. at 5-6.) Second, Plaintiff's substantive due process claim fails "because his allegations do not show egregious or conscience-shocking official conduct." (Id. at 6.) Third, Plaintiff's allegations do not state a viable § 1983 equal protection claim. (Id.) Fourth, Plaintiff fails to state a viable § 1983 retaliation claim. (Id. at 6-7.) Fifth, the Double Jeopardy Clause does not apply here. (Id. at 7.) Nothing in Plaintiff's Objections warrants rejecting the Final Report and Recommendation. Judge Johnson properly evaluated Plaintiff's allegations, and the Court adopts the Final Report and Recommendation and overrules Plaintiff's Objections.

III. Conclusion

ACCORDINGLY, the Court **ADOPTS** the Final Report and Recommendation of United States Magistrate Judge Walter E. Johnson [14] and **OVERRULES** Plaintiff's Objections to the Final Report and Recommendation [18]. The Court **DISMISSES**

Plaintiff's Complaint for failure to state a claim for relief, and it **DIRECTS** the Clerk to **CLOSE** this action.

IT IS SO ORDERED, this the 24th day of May, 2022.

/s/ Harold L. Murphy

SENIOR UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JACKIE RAY ROLLER, Plaintiff, vs. CRYSTAL HOLLOWAY, et al., Defendants.	CIVIL ACTION FILE NO. 4:21-cv-65-HLM-WEJ

JUDGMENT

This action having come before the court, Honorable Harold L. Murphy, United States District Judge, for consideration, it is

Ordered and Adjudged that the action be **DISMISSED** for failure to state a claim for relief.

Dated at Rome, Georgia, this 24th day of May, 2022.

KEVIN P. WEIMER
CLERK OF COURT

By: s/Jill Ayers
, Deputy Clerk

Prepared, Filed, and Entered
in the Clerk's Office
May 24, 2022
Kevin P. Weimer
Clerk of Court

By: s/Jill Ayers
Deputy Clerk

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