

APPENDIX 4

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

February 11, 2025

Walter Drummond
Taylor CI Annex - Inmate Legal Mail
8501 HAMPTON SPRINGS RD
PERRY, FL 32348

Appeal Number: 24-10769-D
Case Style: Walter Drummond v. Broward County
District Court Docket No: 1:23-cv-22969-RKA

The enclosed order has been ENTERED.

Electronic Filing

All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website.

Clerk's Office Phone Numbers

General Information: 404-335-6100	Attorney Admissions: 404-335-6122
Case Administration: 404-335-6135	Capital Cases: 404-335-6200
CM/ECF Help Desk: 404-335-6125	Cases Set for Oral Argument: 404-335-6141

MOT-2 Notice of Court Action

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-10769

WALTER DRUMMOND,

Plaintiff-Appellant,

versus

BROWARD COUNTY,
BSO (Broward Sheriff Office),

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:23-cv-22969-RKA

Before BRANCH, LUCK, and LAGOA, Circuit Judges.

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Order of the Court

24-10769

BY THE COURT:

Pursuant to 11th Cir. R. 22-1(c) and 27-2, Walter Drummond, moves for reconsideration of this Court's December 30, 2024, order denying him leave to proceed, appointment of counsel, and an expedited ruling, on appeal from the denial of his *pro se* Fed. R. Civ. P. 60(b) and equitable tolling motions in a dismissed civil action. Upon review, Drummond's motion is DENIED because he offers no new evidence or meritorious arguments as to why this Court should reconsider its previous order.

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-10769

WALTER DRUMMOND,

Plaintiff-Appellant,

versus

BROWARD COUNTY,
BSO (Broward Sheriff Office),

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:23-cv-22969-RKA

Before BRANCH, LUCK, and LAGOA, Circuit Judges.

BY THE COURT:

Walter Drummond, in the district court, filed a notice of appeal and a motion to proceed on appeal *in forma pauperis*. The district court denied *in forma pauperis* status, certifying that the appeal was frivolous and not taken in good faith. Drummond has consented to pay the filing fee, using the partial payment plan described under § 1915(b). Thus, the only remaining issue for us is whether the appeal is frivolous. *See* 28 U.S.C. § 1915(e)(2)(B)(i). This Court now finds that the appeal is frivolous, DENIES leave to proceed, DISMISSES the appeal and DENIES AS MOOT Drummond's motion for appointment of counsel and to expedite the ruling on his motions.

APPENDIX B

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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February 14, 2025

Walter Drummond
Taylor CI Annex - Inmate Legal Mail
8501 HAMPTON SPRINGS RD
PERRY, FL 32348

Appeal Number: 24-10769-D
Case Style: Walter Drummond v. Broward County
District Court Docket No: 1:23-cv-22969-RKA

NO ACTION / DEFICIENCY NOTICE

Notice that no action will be taken on Motion for reconsideration of panel order [10400660-2],
Motion for appointment of counsel [10400660-3] filed by Appellant Walter Drummond.

Reason(s) no action being taken on filing(s): Successive motions for reconsideration are not permitted. See 11th Cir. R. 27-3.

No deadlines will be extended as a result of your deficient filing.

ACTION REQUIRED

For motions for reconsideration or petitions for rehearing that are not permitted, no action is required or permitted. Your filing will not be considered.

For mistaken filings, to have your document considered, **you must file the document in the correct court.**

For all other deficiencies, to have your document considered, **you must refile the entire document** after all the deficiencies identified above have been corrected and **you must include** any required items identified above **along with** the refiled document. No action will be taken if you only provide the missing items without refiling your entire document.

APPENDIX B

Please note that any filing submitted out of time must be accompanied by an appropriate motion, *i.e.*, a motion to file out of time, a motion to reinstate if the case has been dismissed, and/or a motion to recall the mandate if the mandate has issued.

Clerk's Office Phone Numbers

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Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

Notice No Action Taken

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-cv-22969-ALTMAN

WALTER DRUMMOND,

Plaintiff,

v.

BROWARD COUNTY,

Defendant.

ORDER

Our Plaintiff, Walter Drummond, is serving a life sentence in the custody of the Florida Department of Corrections because he was adjudicated guilty of “robbery with a firearm and shooting into an occupied dwelling entered in the Seventeenth Judicial Circuit Court for Broward County, Florida, Case No. 02-004343-CF10A.” Order of Dismissal, *Drummond v. Fla. Dep’t of Corr.*, No. 21-cv-61823 (S.D. Fla. Aug. 31, 2021) (Bloom, J.), ECF No. 3 at 1, *aff’d*, 2023 WL 28977 (11th Cir. Jan. 4, 2023). Drummond has now filed this civil-rights complaint under 42 U.S.C. § 1983, seeking \$23 billion from the Broward County Sheriff’s Office for certain (alleged) violations of his *Miranda*¹ rights, which resulted in Drummond being “wrongfully incarcerated for 20 years[.]” Complaint [ECF No. 1] at 5. After careful review, we **DISMISS** the Complaint because it (1) fails to state a claim under § 1983, and (2) is a transparent attempt to circumvent 28 U.S.C. § 2244(b)’s general prohibition against second or successive petitions.

THE LAW

The Court “*shall* review . . . a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A (emphasis

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

added). A “prisoner” includes “any person incarcerated or detained in any facility who is . . . accused of [or] convicted of . . . violations of criminal law.” §1915A(c). In conducting its screening of a prisoner’s complaint, the Court must “dismiss the complaint, or any portion of the complaint,” when it is (1) “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.” § 1915A(b).

To state a claim upon which relief may be granted, a complaint’s factual allegations “must be enough to raise a right to relief above the speculative level”—with “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). Under this standard, legal conclusions “are not entitled to the assumption of truth” and are insufficient to state a claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Moreover, “[w]here a complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to relief.” *Id.* at 678 (internal quotation marks omitted).

ANALYSIS

We’ll start with the biggest issue Drummond’s Complaint faces: A § 1983 plaintiff cannot sue a state actor for committing a *Miranda* violation. Just last year, the Supreme Court held that “a violation of *Miranda* does not necessarily constitute a violation of the Constitution, and therefore such a violation does not constitute ‘the deprivation of a right secured by the Constitution.’” *Vega v. Tekoh*, 142 S. Ct. 2095, 2106 (2022) (quoting 42 U.S.C. § 1983 (alterations omitted)). The Court explained that “[a]llowing § 1983 suits based on *Miranda* claims” to proceed would (among other things) produce “unnecessary friction” between the federal and state court systems by requiring the federal court entertaining the § 1983 claim to pass judgment on legal and factual issues already settled in state court.” *Id.* at 2107; *see also Heck v. Humphrey*, 512 U.S. 477, 487 (1994) (“A claim for damages [which would necessarily imply the invalidity of] a conviction or sentence that has not been so invalidated is not cognizable under § 1983.”). Generally speaking, then, a plaintiff who believes that his conviction was

premised on a *Miranda* violation must assert that claim in a petition for a writ of habeas corpus under 28 U.S.C. § 2254. *See Hutcherson v. Riley*, 468 F.3d 750, 754 (11th Cir. 2006) (“Simply put, if the relief sought by the inmate would either invalidate his conviction or sentence or change the nature or duration of his sentence, the inmate’s claim must be raised in a § 2254 habeas petition, not a § 1983 civil rights action.”); *see also*, e.g., *Hunter v. Skipper*, 2022 WL 16924128, at *4 (W.D.N.C. Nov. 14, 2022) (Reidinger, C.J.) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (explaining that *Miranda* claims are “not cognizable in this § 1983 action” and that the plaintiff’s “sole federal remedy is a writ of habeas corpus”)).

And, of course, Drummond has already tried that. He’s filed at least two § 2254 petitions in this Court, complaining that his conviction was unconstitutionally tainted by a *Miranda* violation. *See generally* Petition, *Drummond v. Fla. Dep’t of Corr.*, No. 21-cv-61823 (S.D. Fla. Aug. 30, 2021), ECF No. 1 at 3; Petition, *Drummond v. Florida*, No. 23-cv-60694 (S.D. Fla. Apr. 13, 2023), ECF No. 1 at 8. Unfortunately for Drummond, both of his § 2254 petitions were dismissed because they were “second or successive” petitions that were filed without authorization from the Eleventh Circuit. *See* Order of Dismissal, *Drummond v. Fla. Dep’t of Corr.*, No. 21-cv-61823 (S.D. Fla. Aug. 31, 2021) (Bloom, J.), ECF No. 3 at 1 (“For the reasons set forth below, the Petition is dismissed as successive.”); Order of Dismissal, *Drummond v. Florida*, No. 23-cv-60694 (S.D. Fla. June 30, 2023) (Moore, J.), ECF No. 4 at 3 (“Because the instant federal petition challenges the legality of the same state court judgment that was the subject of Petitioner’s 2015 and 2021 § 2254 actions, this later filing is successive and subject to dismissal.”); *see also* *Drummond*, 2023 WL 28977, at *1 (“Thus, the district court did not err in dismissing Drummond’s petition as successive because he had previously filed a § 2254 petition.”).

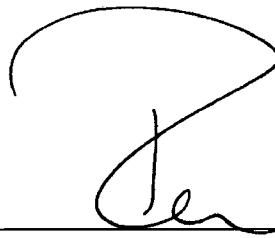
* * *

In short, two judges in our District prevented Drummond from bringing his *Miranda*-based claim in successive § 2254 petitions. Unsatisfied with this outcome, Drummond tried to repackage the

same claim in a § 1983 complaint. This too, however, is improper. *See Hutcherson*, 468 F.3d at 754 (“[I]f a claim can be raised in a federal habeas petition, that same claim cannot be raised in a separate § 1983 civil rights action.” (citing *Nelson v. Campbell*, 541 U.S. 637, 643 (2004))).

Accordingly, we hereby **ORDER AND ADJUDGE** that the Complaint [ECF No. 1] is **DISMISSED** for failure to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915A(b). All pending motions are **DENIED as moot**. The Clerk of Court shall **CLOSE** this case.

DONE AND ORDERED in the Southern District of Florida on August 9, 2023.



ROY K. ALTMAN
UNITED STATES DISTRICT JUDGE

cc: Walter Drummond, *pro se*

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