

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

JOHN ALLEN GLADDEN,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 5:12-CV-2434-VEH-HGD
)	
GOVERNOR ROBERT BENTLEY,)	
et al.,)	
)	
Defendants.)	

MEMORANDUM OF OPINION

Now pending before the court is the Magistrate Judge’s Report and Recommendation (doc. 23; the “R&R”), filed February 5, 2013. Also pending is Plaintiff’s Motion To Withdraw (doc. 24; the “Motion), filed February 8, 2013. In the R&R, the magistrate judge found that all of Plaintiff’s claims brought under 42 U.S.C. § 1983 are barred by the applicable statute of limitations. The magistrate judge further found that Plaintiff’s requests that his probation be reinstated in two other criminal cases and that he be released from custody immediately were not properly before the court, as such claims can be brought only by way of a petition for writ of habeas

corpus.¹ The Plaintiff was notified of his right to file written objections to the R&R, and the deadline to do so.

Plaintiff's deadline to file objections was February 19, 2013. Rather than filing objections, the Plaintiff filed his Motion. In the Motion, the Plaintiff "agrees with [the R&R's conclusion that] Plaintiff[s] 1983 Petition was untimely filed" and asks this court to "allow him to withdraw his 1983 Petition in [this case]." However, he further states that he "reserves the opt[ion] to refile at a later date."

The court finds that, by not objecting, the Plaintiff has waived his right to object to the R&R. Further, having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the Court is of the opinion that the magistrate judge's report is due to be and is hereby **ADOPTED** and his recommendation is **ACCEPTED**. The Court **EXPRESSLY FINDS** that there are no genuine issues of material fact and that the defendants are entitled to judgment as a matter of law. Accordingly, this action is due to be **DISMISSED WITH PREJUDICE**. A Final Judgment Order will be entered.

¹ The magistrate judge further noted that Plaintiff's petition for writ of habeas corpus is pending before the court in the case styled *Gladden v. Blount County*, Case No. 2:12-cv-01936-RDP-HGD. That case remains pending.

DONE this the 20th day of February, 2013.



VIRGINIA EMERSON HOPKINS

United States District Judge