

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

TOMMY D. HALL

PLAINTIFF

V.

CASE NO. 09-CV-4081

OFFICER NICK ELROD, TEXARKANA
POLICE DEPARTMENT, TEXARKANA,
ARKANSAS; OFFICER JEREMY GORDON,
TEXARKANA POLICE DEPARTMENT; AND
SGT. DEVIN WARNER, TEXARKANA POLICE
DEPARTMENT

DEFENDANTS

ORDER

Before the Court is the Report and Recommendation filed February 1, 2010, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (Doc. 20). Judge Bryant recommends that the Defendants' Motion to Dismiss (Doc. 12) be granted and the case be dismissed with prejudice. Plaintiff Tommy Hall has responded with timely objections. (Doc. 21). After reviewing the record *de novo*, the Court adopts Judge Bryant's Report and Recommendation as its own.

In his objections to the Report and Recommendation, Hall asserts that he was illegally searched and not properly mirandized upon his arrest for drug possession on August 27, 2004. He also maintains that he did not confess to the offense, a claim the Defendants dispute. Hall accuses the Defendants of malicious prosecution stemming from his belief that these officers, in addition to the illegal search and inadequate Miranda waiver, filed a false police report with fabricated witness

testimony and provided false testimony at a revocation hearing held on August 25, 2005. Hall disagrees that his claims against the Defendants should be dismissed.

Upon review, the Court agrees with Judge Bryant that Hall's illegal search and seizure claims are now time barred as the three year statute of limitations on § 1983 claims has passed. Hall cites *Heck v. Humphrey*, 512 U.S. 477 (1994) for the proposition that the statute of limitations on his search and seizure claims did not begin to run upon his arrest on August 27, 2004, the date of the alleged unconstitutional acts by the Defendants. Rather, Hall claims that the holding in *Heck* prevented him from filing this suit until the felony offense of possession of a controlled substance against him was dismissed. Hall maintains that the statute of limitations began to run on this dismissal date, November 2, 2006. Judge Bryant correctly noted in his Response and Recommendation that illegal search and seizure claims are general exceptions to the statute of limitations rule from *Heck*. *Id.* at 487 n. 7. Therefore, the three year statute of limitations for these search and seizure claims began to run on August 27, 2004 and are now time barred.

In addition to the search and seizure claims, Plaintiff Hall points out other acts of the Defendants that he feels shows malicious intent and a conspiracy to convict him, including the inaccurate Miranda waiver form, the alleged fabrication of witness testimony, and the repetition of inaccurate information from the original police report at a probation revocation hearing. However, as Judge Bryant noted, these alleged unconstitutional acts all originated from Hall's arrest on August 27, 2007. Plaintiff has not alleged that there was an on-going conspiracy to build a case against him that would have constituted a single, continuous violation of his constitutional rights up until the dismissal of his felony drug possession charge in 2006. *Robinson v. Maruffi*, 895 F.2d 649, 654 (10th Cir. 1990). Therefore, the three year statute of limitations began running on the date of his

initial arrest in 2004. Hall's claims in relation to these alleged actions by the Defendants are now time barred.

For the reasons stated herein and above, as well as those contained in Judge Bryant's Report and Recommendation (Doc. 20), Defendants' Motion to Dismiss is **GRANTED** and Plaintiff Hall's claims against Defendants are **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED, this 30th day of June, 2010.

/s/ Harry F. Barnes
Hon. Harry F. Barnes
United States District Judge