

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

MARCUS T. GAY, SR.

PLAINTIFF

VS.

CASE NO. 4:16-CV-4034

TROOPER STEVEN ROBERTS, *et al.*

DEFENDANTS

ORDER

Before the Court is the Report and Recommendation filed April 20, 2016 by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 5). Judge Bryant recommends that Plaintiff's Motion for Service be denied and that his claims against Defendants be dismissed. Specifically, Judge Bryant held that Plaintiff may not pursue his claim for his allegedly unconstitutional conviction or imprisonment because his conviction has not been reversed on appeal, expunged by executive order, or declared invalid. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). Plaintiff has filed objections to the Report and Recommendation. (ECF No. 6).¹ After reviewing the record *de novo*, the Court adopts Judge Bryant's Report and Recommendation as its own.

In his objections, Plaintiff submits various documents and argues that these documents demonstrate that his arrest and conviction in Hempstead County, Arkansas were overturned on appeal. Plaintiff is mistaken. While Plaintiff appealed his conviction, his own documents demonstrate that his appeal was dismissed because he failed to comply with the time requirements

¹The Court notes that the deadline for filing objections passed on May 9, 2016. Plaintiff's objections were untimely filed on May 13, 2016. While the Court is not required to consider these untimely objections, the Court will nonetheless address Plaintiff's arguments.

of Arkansas Rule of Criminal Procedure 36(b) and failed to pay the required filing fee. (ECF No. 6, p. 23). Because Plaintiff's appeal was ultimately dismissed, he cannot demonstrate that his conviction has been reversed on appeal.

The Court overrules Plaintiff's objections and adopts Judge Bryant's Report and Recommendation (ECF No. 5). For the reasons stated herein and above, as well as those contained in the Report and Recommendation, Plaintiff's Complaint is **DISMISSED**.²

IT IS SO ORDERED, this 30th day of August, 2016.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge

²After filing objections to the Report and Recommendation, Plaintiff filed an Amended Complaint. (ECF No. 7). The Court has reviewed this amendment and finds it to be futile. The additional factual allegations in the Amended Complaint do no alter the analysis above. Plaintiff cannot show that his criminal case in Hempstead County has been reversed on appeal.