

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JAMES E. JORDAN,

Plaintiff,

v.

CASE NO. 8:17-cv-707-T-23TGW

BERNIE MCCABE, et al.,

Defendants.

ORDER

Convicted in state court of robbery and violating probation, James Jordan sues (Doc. 1) under Section 1983 the State Attorney for the Sixth Judicial Circuit, several police officers, and the “victim” of Jordan’s crime. Jordan alleges a violation of the Fourth, Fifth, Eighth, and Fourteenth Amendments and requests “immediate emergency release” from the state prison in which Jordan resides. (Doc. 1 at 11) In a thorough report, Magistrate Judge Wilson recommends (Doc. 4) denying the motion (Doc. 2) for leave to proceed *in forma pauperis* and recommends dismissing the action for several reasons. More than fourteen days passed, and Jordan proffers no objection to the report and recommendation.

As Magistrate Judge Wilson explains, an inmate cannot invoke Section 1983 to challenge a conviction and consequent incarceration. (Doc. 4 at 3) Rather, the inmate’s “sole federal remedy is a writ of habeas corpus.” (Doc. 4 at 3 (citing *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973))) Jordan unsuccessfully exhausted the “sole

federal remedy.” In 2012 the Middle District of Florida denied Jordan’s application for the writ of habeas corpus, and the Eleventh Circuit denied Jordan’s request for a certificate of appealability. Case no. *8:12-cv-1282-JSM-AEP*. Also, Magistrate Judge Wilson correctly states that Jordan cannot recover damages because *Heck v. Humphrey*, 512 U.S. 477 (1994), permits the recovery of damages for an allegedly unconstitutional conviction only if the conviction is overturned. No court overturned Jordan’s conviction. Finally, as Magistrate Judge Wilson explains, Florida’s four-year limitation bars Jordan’s suing in 2017 for a 2008 conviction. Because amending the complaint is futile, Magistrate Judge Wilson recommends dismissing the action. The report and recommendation (Doc. 4) is **ADOPTED**, the motion (Doc. 2) for leave to proceed *in forma pauperis* is **DENIED**, and the action is **DISMISSED**. The clerk is directed to close the case.

ORDERED in Tampa, Florida, on May 12, 2017.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE