

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
GAINESVILLE DIVISION

DOUGLAS WALKER,

Petitioner,

v.

CASE NO. 1:10-cv-00097-MP -GRJ

WALTER A MCNEIL,

Respondent.

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**ORDER**

This matter is before the Court on Doc. 17, Additional Information for Objection to Report and Recommendation by Douglas Walker. On February 15, 2011, the Court adopted the Magistrate Judge’s Report and Recommendation and dismissed Walker’s petition for writ of habeas corpus without prejudice for failure to prosecute, pursuant to Fed. R. Civ. P. 41(b). Petitioner now submits newly discovered evidence, including retaliatory claims, in support of his objection to the Report and Recommendation. The Court construes this renewed objection as a motion for reconsideration.

Habeas is inappropriate for the relief being sought and that relief, if any, would be cognizable only under a civil action for deprivation of rights, pursuant to 42 U.S.C. § 1983. Where a litigant is not challenging the fact or duration of confinement, but rather the conditions of that confinement, then civil rights is the proper avenue of relief. *See Porter v. Nussle*, 534 U.S. 516, 526, 122 S. Ct. 983, 990 (2002). As the Magistrate Judge noted in his Report and Recommendation, Petitioner’s claims might be cognizable under 42 U.S.C. § 1983; however, Petitioner would not be permitted to pursue such claims *in forma pauperis* because he is subject

to the three-strikes bar of 28 U.S.C. § 1915(g). Accordingly it is

**ORDERED AND ADJUDGED:**

1. The motion for reconsideration, Doc. 17, is DENIED.

**DONE AND ORDERED** this 11th day of April, 2011

*s/Maurice M. Paul*

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Maurice M. Paul, Senior District Judge