

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

**DELMART E.J.M. VREELAND, II,**

*Petitioner,*

v.

**Case No.: 4:19cv529-MW/EMT**

**WARDEN SCOTT PRUITT,**

*Respondent.*

\_\_\_\_\_ /

**ORDER ACCEPTING REPORT AND RECOMMENDATION**

This Court has considered, without hearing, the Magistrate Judge’s Report and Recommendation, ECF No. 17, and has also reviewed *de novo* Petitioner’s objections to the report and recommendation, ECF No. 21. This Court writes simply to address one argument Petitioner raises in his objections; namely, the issue of actual innocence—something that, if proved, “serves as a gateway through which a petitioner may pass whether the impediment [to habeas relief] is a procedural bar . . . or . . . expiration of the statute of limitations.” *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013). “In other words, a credible showing of actual innocence may allow a prisoner to pursue his constitutional claims . . . on the merits.” *Id.* at 392.

Here, with respect to Petitioner’s claim of actual innocence, Petitioner asserts he should have been charged with the more specific crime of passing a worthless check or obtaining property in return for a worthless check instead of grand theft.

*See, State v. Smith*, 578 So. 2d 826, 827 (Fla. 5th DCA 1991) (“Obtaining property in return for a worthless check *will always* constitute theft because *the more general theft element subsumes the more specific worthless check element.*”) (emphasis in original). Petitioner’s quarrel with the State Attorney’s charging decision does not equate to a claim for actual innocence. Accordingly,

**IT IS ORDERED:**

The report and recommendation is **accepted and adopted**, over Petitioner’s objections, as this Court’s opinion. The Clerk shall enter judgment stating, “The Respondent’s motion to dismiss, ECF No. 10, is **GRANTED**. The petition for writ of habeas corpus, ECF No. 1, is **DISMISSED** as untimely.” A certificate of appealability is **DENIED**. The Clerk shall close the file.

**SO ORDERED on November 18, 2020.**

**s/Mark E. Walker**  
**Chief United States District Judge**