

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

KEVIN ANTHONY MOORE,

Plaintiff,

v.

CASE NO. 5:10-cv-38/MW/EMT

**MIKE HARRIS and
WARDEN MARK HENRY,**

Defendants.

_____ /

**ORDER ACCEPTING AND ADOPTING REPORT AND
RECOMMENDATION**

The Court has considered the Magistrate's Report and Recommendation, ECF No.88, filed March 1, 2013. The Court has also reviewed *de novo* Plaintiff's Objection to Report and Recommendation of Magistrate, ECF No.89, filed March 15, 2013. Upon consideration,

IT IS ORDERED:

The report and recommendation is accepted and adopted as the court's opinion and this Court notes the following.

Plaintiff attempts to avoid the application of the statute of limitations by seeking shelter under the *Heck* accrual rule. *See Heck v. Humphrey*, 512 U.S. 477, 489-90 (1994). *Heck*, however, does not apply. *Heck* prohibits an action under §

42 U.S.C. 1983 if “a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence,” “unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.” *Id.* at 487.

Here, neither the conviction nor sentence is implicated. The thrust of Plaintiff’s argument is that the status of being a sex offender and the associated registration requirements implicate his “sentence” for purposes of *Heck*. Contrary to Plaintiff’s view, the Supreme Court has made clear that the word “sentence” as used in *Heck* refers to “substantive determinations as to the length of confinement.” *Wilkinson v. Dotson*, 544 U.S. 74, 83 (2005). It is for this reason that *Heck*’s application has logically extended to cases involving deprivation of gain time as a result of disciplinary proceedings. *See, e.g., Edwards v. Balisok*, 520 U.S. 641, 645-48 (1997). Inasmuch the length of Plaintiff’s confinement is not implicated, *Heck* has no application in this case.

The Clerk shall enter judgment stating, “Defendants’ motion to dismiss is **GRANTED**; judgment is entered in favor of Defendants.” The Clerk shall close the file.

SO ORDERED on March 19, 2013.

s/Mark E. Walker
United States District Judge