

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 08-22965-CIV-HUCK/TURNOFF

IGOR FEDERICO MANOTAS-LOPEZ,

Plaintiff,

v.

MICHAEL WALSH, et al.,

Defendants.



ORDER ON REPORT OF MAGISTRATE JUDGE

THIS CAUSE comes before the Court upon the Report of the Honorable Patrick A. White, United States Magistrate Judge, filed March 3, 2009 [D.E. #11]. Magistrate Judge White's Report determines that the claims brought against AUSA Joseph Cooley and Agent Christopher Ciccoone are being brought under the authority of *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971); however, because the petitioner's conviction and sentence have not been reversed, expunged, invalidated or impugned by the grant of a writ of habeas corpus, he can not maintain a *Bivens* action for damages at this time against those defendants. The Report further determines that the petitioner's claims against defendants Michael Walsh and Jordan Lewin are brought pursuant to the Court's diversity of citizenship jurisdiction, but that the petitioner may not invoke the Court's diversity jurisdiction because the actual amount in controversy is \$40,000, less than the required jurisdictional amount. Magistrate Judge White's Report concludes that Petitioner is essentially challenging the constitutionality of his conviction by raising claims of ineffective assistance of counsel, prosecutorial misconduct, and other related claims. The Report further concludes that if the petitioner desires to raise claims which challenge the legality of his conviction and sentence, he must seek permission from the Eleventh Circuit to file a successive § 2255 motion, pursuant to 28 U.S.C. § 244(b)(3)(A), explaining why he could not have raised the claims in his earlier motion to vacate.

The petitioner has filed a written objection [D.E. #12] in which he objects to the calculation of the amount in controversy and Magistrate Judge White's analysis regarding the *Bivens* claims.

Having reviewed *de novo* the Report, the Petitioner's objection, the record, and being

otherwise duly advised, this Court agrees with Magistrate Judge White's conclusion that the petitioner is essentially filing a challenge to the constitutionality of his conviction and that to do so, petitioner must seek permission from the Eleventh Circuit to file a successive § 2255 motion explaining why he could not have raised these claims in his earlier motion to vacate. In addition, by Petitioner's own pleading, he is seeking damages of \$40,000. It is therefore

ORDERED that the Report and Recommendation of Magistrate Judge White be RATIFIED, ADOPTED, and made the Order of the District Court. The Complaint is DISMISSED and the Clerk is directed to CLOSE the case.

DONE in Chambers, Miami, Florida, this March 25, 2009.



Paul C. Huck
United States District Judge

Copies furnished to:
Magistrate Judge Patrick A. White

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