

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

DANTE G. FREDRICK,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

CIVIL ACTION NO.: 2:15-cv-173

ORDER and MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Petitioner, Dante G. Fredrick (“Fredrick”), who is currently housed at Valdosta State Prison in Valdosta, Georgia, has submitted a Petition for a writ of mandamus. (Doc. 1.) Fredrick also filed a Motion to Proceed *in Forma Pauperis*. (Doc. 2.) For the reasons which follow, the Court **DENIES** Fredrick’s Motion to Proceed *in Forma Pauperis*, and I **RECOMMEND** that the Court **DISMISS** his Petition. Additionally, Fredrick should be **DENIED** leave to appeal *in forma pauperis*.

BACKGROUND

Fredrick filed his Complaint against the State of Georgia on December 11, 2015. (Doc. 1.) In his Complaint, Fredrick takes issue with his convictions obtained in the Glynn County Superior Court and State Court. Fredrick maintains that that the Glynn County Clerk’s Office, the Judges of Glynn County, the District Attorney’s Office, and the Solicitor General’s Office have failed to take actions requested by him and related to his convictions. Fredrick alleges that these various actors have violated his rights to due process and he has “13 convictions in [the state courts] against the policy of law.” (*Id.* at p. 2.) He petitions this Court

to issue a writ of mandamus ordering state officials to “immediately cease these irreparable injurys [sic] and violation of the Constitution against petitioner.” (Id. at p. 6.)

STANDARD OF REVIEW

Fredrick seeks to bring this action *in forma pauperis*. Under 28 U.S.C. § 1915(a)(1), the Court may authorize the filing of a civil lawsuit without the prepayment of fees if the plaintiff submits an affidavit that includes a statement of all of his assets and shows an inability to pay the filing fee and also includes a statement of the nature of the action which shows that he is entitled to redress. Even if the plaintiff proves indigence, the Court must dismiss the action if it is frivolous or malicious, or fails to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2)(B)(i)–(ii). Additionally, pursuant to 28 U.S.C. § 1915A, the Court must review a complaint in which a prisoner seeks redress from a governmental entity. Upon such screening, the Court must dismiss a complaint, or any portion thereof, that is frivolous or malicious, or fails to state a claim upon which relief may be granted or which seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

When reviewing a Complaint on an application to proceed *in forma pauperis*, the Court is guided by the instructions for pleading contained in the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 8 (“A pleading that states a claim for relief must contain [among other things] . . . a short and plain statement of the claim showing that the pleader is entitled to relief.”); Fed. R. Civ. P. 10 (requiring that claims be set forth in numbered paragraphs, each limited to a single set of circumstances). Further, a claim is frivolous under Section 1915(e)(2)(B)(i) “if it is ‘without arguable merit either in law or fact.’” Napier v. Preslicka, 314 F.3d 528, 531 (11th Cir. 2002) (quoting Bilal v. Driver, 251 F.3d 1346, 1349 (11th Cir. 2001)).

Whether a complaint fails to state a claim under Section 1915(e)(2)(B)(ii) is governed by the same standard applicable to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). Thompson v. Rundle, 393 F. App'x 675, 678 (11th Cir. 2010). Under that standard, this Court must determine whether the complaint contains “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A plaintiff must assert “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not” suffice. Twombly, 550 U.S. at 555. Section 1915 also “accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless.” Bilal, 251 F.3d at 1349 (quoting Neitzke v. Williams, 490 U.S. 319, 327 (1989)).

In its analysis, the Court will abide by the long-standing principle that the pleadings of unrepresented parties are held to a less stringent standard than those drafted by attorneys and, therefore, must be liberally construed. Haines v. Kerner, 404 U.S. 519, 520 (1972); Boxer X v. Harris, 437 F.3d 1107, 1110 (11th Cir. 2006) (“Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys.”) (emphasis omitted) (quoting Hughes v. Lott, 350 F.3d 1157, 1160 (11th Cir. 2003)). However, Fredrick’s unrepresented status will not excuse mistakes regarding procedural rules. McNeil v. United States, 508 U.S. 106, 113 (1993) (“We have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel.”).

DISCUSSION¹

I. Dismissal for Lack of Jurisdiction

Fredrick brings this action as a petition for a writ of mandamus. However, federal courts can only issue writs of mandamus to “compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.” 28 U.S.C. § 1361. Federal courts do not have the jurisdiction to issue writs of mandamus directing state officials in the performance of their duties. Lawrence v. Miami-Dade Cty. State Attorney Office, 272 Fed. App’x. 781 (11th Cir. 2008) (“Because the only relief Lawrence sought was a writ of mandamus compelling action from state officials, not federal officials, the district court lacked jurisdiction to grant relief and did not err in dismissing the petition.”); Moye v. Clerk, DeKalb Cty. Super. Ct., 474 F.2d 1275, 1276 (5th Cir. 1973).² Therefore, federal district courts have repeatedly held that they lack

¹ In addition to the reasons set forth herein, Fredrick’s petition to proceed *in forma pauperis* can also be denied because he has “on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted” 28 U.S.C. § 1915(g). Indeed, Fredrick has brought numerous actions in this Court asserting the same or similar claims that he asserts in this case. Petitions for Mandamus against either federal officials or against state officials qualify as “civil actions” under 28 U.S.C. § 1915(g). Bure v. Miami-Dade Cty. Corr. & Rehab. Dep’t, No. 08-23331-CIV, 2009 WL 35238, at *4 (S.D. Fla. Jan. 5, 2009) (citing In Re: Billy D. Jacobs, a/k/a Ya qub, 213 F.3d 289 (5th Cir. 2000); Green v. Nottingham, 90 F.3d 415, 418 (10th Cir. 1996); In Re: Michael C. Washington, 122 F.3d 1345 (10th Cir. 1997); Hicks v. Brysch, 989 F. Supp. 797 (W.D. Tex. 1997)); see also In re Smith, 114 F.3d 1247, 1250 (D.C. Cir. 1997) (“[I]t would defeat the purpose of the PLRA if a prisoner could evade its requirements simply by dressing up an ordinary civil action as a petition for mandamus[.]”); Green, 90 F.3d at 418 (“Allowing prisoners to continue filing actions as they had before enactment of the [PLRA], merely by framing pleadings as petitions for mandamus would allow a loophole Congress surely did not intend in its stated goal of ‘discourag [ing] frivolous and abusive prison lawsuits.’”); In re Nagy, 89 F.3d 115, 117 (2d Cir. 1996) (“[I]f a prisoner, contemplating the filing of a complaint . . . under 42 U.S.C. § 1983, decided to avoid liability for filing fees and instead sought comparable relief by applying for a writ of mandamus . . . the PLRA provisions should normally apply.”); Tate v. Price, No. CIV A 2:09CV221-TMH, 2009 WL 1034965, at *1 (M.D. Ala. Apr. 16, 2009) (“claims are civil in nature and governed by the provisions of the PLRA which prevent [petitioner] from proceeding *in forma pauperis* on these claims due to his violation of the three-strikes provision.”); Hernandez v. Century Corr. Inst., No. 307CV185/LAC/EMT, 2007 WL 2376280, at *2 (N.D. Fla. Aug. 15, 2007).

² In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981), the Eleventh Circuit adopted as binding precedent all Fifth Circuit decisions delivered on or before September 30, 1981.

jurisdiction to issue a writ of mandamus as to state officials. See, e.g., Church of Scientology of Ga., Inc. v. City of Sandy Springs, 843 F. Supp. 2d 1328, 1380 (N.D. Ga. 2012) (“Federal district courts do not have the authority to issue writs of mandamus to direct state officials in the performance of their duties.”). Because Fredrick only names the State of Georgia in his Complaint and asks this Court to order state officials to take action, the Court should **DISMISS** his claims for lack of jurisdiction.

II. Heck v. Humphrey and Rooker-Feldman

Fredrick’s Complaint centers on his prior convictions in Glynn County Superior Court and State Court. However, the Complaint indicates that his conviction has not been reversed, expunged, invalidated, called into question by a federal court’s issuance of the writ of habeas corpus, or otherwise overturned. (Doc. 1.) As Fredrick is seeking relief based on these convictions, this Court is precluded from reviewing his claims by the decision in Heck v. Humphrey, 512 U.S. 477 (1994).

In Heck, a state prisoner filed a Section 1983 damages action against the prosecutors and investigator in his criminal case for their actions which resulted in his conviction. The Supreme Court analogized the plaintiff’s claim to a common-law cause of action for malicious prosecution, which requires as an element of the claim that the prior criminal proceeding was terminated in favor of the accused. 512 U.S. at 484. The Supreme Court reasoned:

We think the hoary principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments applies to § 1983 damages actions that necessarily require the plaintiff to prove the unlawfulness of his conviction or confinement, just as it had always applied to actions for malicious prosecution (footnote omitted).

We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, (footnote omitted), a § 1983 plaintiff must prove that the conviction or sentence has been reversed on

direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983. Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.

Id. at 486–87 (emphasis added).

Under Heck, a plaintiff who is attempting “to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid,” must make a showing that his conviction, sentence, or other criminal judgment was reversed, expunged, declared invalid by an appropriate state tribunal, or called into question in a federal court's issuance of a writ of habeas corpus. Id. If a plaintiff fails to make this showing, then he cannot bring an action under Section 1983. Id. at 489. Furthermore, to the extent a plaintiff contends that a favorable ruling on his Section 1983 claims would not invalidate his conviction, sentence, confinement, or other criminal judgment, the burden is on the plaintiff to prove this contention in order for his claims to proceed. Id. at 487.

Although Heck involved a claim brought under 42 U.S.C. § 1983 for money damages, Heck's holding has been extended to claims seeking declaratory or injunctive relief as well as money damages. See Wilkinson v. Dotson, 544 U.S. 74, 81–82 (2005); Abella v. Rubino, 63 F.3d 1063, 1066 (11th Cir. 1995); see also Preiser v. Rodriguez, 411 U.S. 475, 500 (1973) (“[W]e hold today that when a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas

corpus.”); Desravines v. Fla. Dep’t of Fin. Servs., No. 6:11-CV-235-ORL-22, 2011 WL 2292180, at *3 (M.D. Fla. May 23, 2011) *report and recommendation adopted by* No. 6:11-CV-235-ORL-22, 2011 WL 2222170 (M.D. Fla. June 8, 2011) (citing Gray v. Kinsey, No. 3:09-cv-324/LC/MD, 2009 WL 2634205, at *9 (N.D. Fla. Aug. 25, 2009) (“Under this standard, it is not unusual for a § 1983 claim to be dismissed for failure to satisfy Heck’s favorable termination requirement.”); Domotor v. Wennen, 630 F. Supp. 2d 1368, 1379 (S.D. Fla. 2009) (“allowing the plaintiff to circumvent applicable state procedures and collaterally attack her convictions in federal court is the precise situation that Heck seeks to preclude” when plaintiff entered into a plea agreement with knowledge of substantially all of the allegations that now form the basis of a § 1983 action for damages); Cooper v. Georgia, No. CV413-091, 2013 WL 2253214, at *2 (S.D. Ga. May 22, 2013) *report and recommendation adopted by* No. CV413-091, 2013 WL 2660046 (S.D. Ga. June 11, 2013); Brown v. Renfro, No. CV210-003, 2011 WL 902197, at *2 (S.D. Ga. Jan. 25, 2011), *report and recommendation adopted by* No. CV210-003, 2011 WL 892359 (S.D. Ga. Mar. 9, 2011), *aff’d sub nom.*, Brown v. Coleman, 439 F. App’x 794 (11th Cir. 2011).

In this case, Fredrick has not shown that his convictions or sentences have been favorably terminated. Quite the contrary, Fredrick’s chief complaint is that the state authorities have not reversed his convictions and sentences, and he directly asks this Court to provide him relief from the “irreparable injury” resulting from his convictions. (Doc. 1.) Accordingly, Fredrick’s claims are unquestionably precluded by the Heck decision.

Additional grounds support dismissal of Fredrick’s claims. Pursuant to the Rooker–Feldman doctrine, the Court is without jurisdiction over Fredrick’s claims which essentially seek review of a state-court criminal conviction against him. “The Rooker–Feldman doctrine derives from Rooker v. Fidelity Trust Company, 263 U.S. 413 (1923), and District of Columbia Court of

Appeals v. Feldman, 460 U.S. 462 (1983), and provides that, as a general matter, federal district courts lack jurisdiction to review a final state court decision.” McCorvey v. Weaver, No. 15-10470, 2015 WL 5751756, at *1 (11th Cir. Oct. 2, 2015). Nor, under the Rooker–Feldman doctrine may a federal court “decide federal issues that are raised in state proceedings and ‘inextricably intertwined’ with the state court’s judgment.” See Datz v. Kilgore, 51 F.3d 252, 253 (11th Cir. 1995) (quoting Staley v. Ledbetter, 837 F.2d 1016, 1018 (11th Cir. 1988)). “Rooker–Feldman applies because, among the federal courts, Congress authorized only the Supreme Court to reverse or modify a state court decision.” Helton v. Ramsay, 566 F. App’x 876, 877 (11th Cir. 2014) (citing Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005)). Because Fredrick, through this action, essentially asks this Court to invalidate his convictions by the Glynn County Superior Court and State Court, this Court lacks jurisdiction over his claims.

For these additional reasons, the Court should **DISMISS** Fredrick’s claims in their entirety.

III. Leave to Appeal *in Forma Pauperis*

The Court should also deny Fredrick leave to appeal *in forma pauperis*. Though Fredrick has, of course, not yet filed a notice of appeal, it would be appropriate to address these issues in the Court’s order of dismissal. Fed. R. App. P. 24(a)(3) (trial court may certify that appeal is not taken in good faith “before or after the notice of appeal is filed”).

An appeal cannot be taken *in forma pauperis* if the trial court certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). Good faith in this context must be judged by an objective standard. Busch v. Cty. of Volusia, 189 F.R.D. 687, 691 (M.D. Fla. 1999). A party does not proceed in good faith when he seeks to advance a frivolous

claim or argument. See Coppedge v. United States, 369 U.S. 438, 445 (1962). A claim or argument is frivolous when it appears the factual allegations are clearly baseless or the legal theories are indisputably meritless. Neitzke v. Williams, 490 U.S. 319, 327 (1989); Carroll v. Gross, 984 F.2d 392, 393 (11th Cir. 1993). Or, stated another way, an *in forma pauperis* action is frivolous and, thus, not brought in good faith, if it is “without arguable merit either in law or fact.” Napier v. Preslicka, 314 F.3d 528, 531 (11th Cir. 2002); see also Brown v. United States, Nos. 407CV085, 403CR001, 2009 WL 307872, at *1–2 (S.D. Ga. Feb. 9, 2009).

Based on the above analysis of Fredrick’s action, there are no non-frivolous issues to raise on appeal, and an appeal would not be taken in good faith. Thus, *in forma pauperis* status on appeal should be **DENIED**.

CONCLUSION

For the numerous reasons set forth above, I **RECOMMEND** that this action be **DISMISSED** and that Fredrick be **DENIED** leave to appeal *in forma pauperis*. The Court **DENIES** Fredrick’s Motion to Proceed *in Forma Pauperis* before this Court.

The Court **ORDERS** any party seeking to object to this Report and Recommendation to file specific written objections within fourteen (14) days of the date on which this Report and Recommendation is entered. Any objections asserting that the Magistrate Judge failed to address any contention raised in the Complaint must also be included. Failure to do so will bar any later challenge or review of the factual findings or legal conclusions of the Magistrate Judge. See 28 U.S.C. § 636(b)(1)(C); Thomas v. Arn, 474 U.S. 140 (1985). A copy of the objections must be served upon all other parties to the action. The filing of objections is not a proper vehicle through which to make new allegations or present additional evidence.

Upon receipt of Objections meeting the specificity requirement set out above, a United States District Judge will make a *de novo* determination of those portions of the report, proposed

findings, or recommendation to which objection is made and may accept, reject, or modify in whole or in part, the findings or recommendations made by the Magistrate Judge. Objections not meeting the specificity requirement set out above will not be considered by a District Judge. A party may not appeal a Magistrate Judge's report and recommendation directly to the United States Court of Appeals for the Eleventh Circuit. Appeals may be made only from a final judgment entered by or at the direction of a District Judge.

The Clerk of Court is **DIRECTED** to serve a copy of this Report and Recommendation upon Fredrick.

SO ORDERED and **REPORTED** and **RECOMMENDED**, this 3rd day of January, 2017.

A handwritten signature in blue ink, appearing to read "R. Stan Baker". The signature is written in a cursive style with a horizontal line underneath it.

R. STAN BAKER
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA