

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA

FILED  
U.S. DISTRICT COURT  
SAVANNAH DIV.

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SAVANNAH DIVISION

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SO. DIST. OF GA.

MARVIN LEE HEIGHT,

Plaintiff,

v.

SAM OLENS et al.,

Defendants.

Case No. CV416-032

**ORDER**

After the Court recommended dismissing his 42 U.S.C. § 1983 Complaint as an unauthorized second or successive 28 U.S.C. § 2254 petition (doc. 3), Marvin Height objected, pointing out that claims like his<sup>1</sup> are actionable under § 1983. Doc. 8 at 4 (citing *Grayson v. King*, 460 F.3d 1328 (11th Cir. 2006)). He's right. "[C]laims seeking post-conviction access to biological evidence for DNA testing purposes may be brought as a § 1983 action." *Grayson*, 460 F.3d at 1336. The Court therefore **VACATES** its previous recommendation. Doc. 3. It will address the merits of Height's claim in a separate order.

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<sup>1</sup> Height seeks to have DNA comparison testing performed. Doc. 8 at 2. That, he says, will "exclude him as the perpetrator of th[e] heinous crime" (murder) for which he stands convicted. *Id.*

SO ORDERED, this 15<sup>th</sup> day of March, 2016.

  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF GEORGIA