

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

ANTHONY D. FARRIER

CIVIL ACTION

VERSUS

NO. 20-1611

STATE OF LOUISIANA, et al.

SECTION: "G"(3)

ORDER AND REASONS

Before the Court are Plaintiff Anthony D. Farrier's ("Plaintiff") objections to the Report and Recommendation of the United States Magistrate Judge assigned to the case.¹ Plaintiff, a Louisiana state prisoner, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Orleans Parish District Attorney Leon Cannizzaro, Orleans Parish Criminal District Court Judge Robin Pittman, Louisiana State Penitentiary Warden Darrel Vannoy, and the Louisiana Supreme Court.² Plaintiff alleges that under *Ramos v. Louisiana* his constitutional rights were violated when he was convicted by a non-unanimous jury.³ The Magistrate Judge recommended that the Court dismiss Plaintiff's Section 1983 claims pursuant to the Supreme Court's holding in *Heck v. Humphery* because a judgment in Plaintiff's favor would necessarily imply the invalidity of Plaintiff's conviction.⁴ Plaintiff objects to the Magistrate Judge's recommendation.⁵ Considering the Complaint, the Report and Recommendation, Plaintiff's objections, the record, and the applicable

¹ Rec. Doc. 7.

² Rec. Doc. 3.

³ *Id.* (citing *Ramos v. Louisiana*, 140 S.Ct. 1390 (2020)).

⁴ Rec. Doc. 6.

⁵ Rec. Doc. 7.

law, the Court overrules Plaintiff's objections, adopts the Report and Recommendation, and dismisses Plaintiff's claims with prejudice until such time as the *Heck* conditions are met.

I. Background

On June 22, 2020, Plaintiff filed a complaint in this Court alleging his conviction by a non-unanimous jury violated his constitutional right under the Fourteenth Amendment.⁶ Plaintiff brings claims under 42 U.S.C. § 1983 against Orleans Parish District Attorney Leon Cannizzaro, Orleans Parish Criminal District Court Judge Robin Pittman, Louisiana State Penitentiary Warden Darrel Vannoy, and the Louisiana Supreme Court.⁷ Plaintiff seeks damages, declaratory relief, and injunctive relief.⁸

The Magistrate Judge recommended that Plaintiff's Section 1983 claims be dismissed pursuant to the Supreme Court's holding in *Heck v. Humphrey*.⁹ Under *Heck*, a plaintiff may not recover under Section 1983 unless his conviction is "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."¹⁰ Because Plaintiff has not demonstrated that his conviction has already been invalidated, *Heck* would bar his claims for damages, declaratory relief, and injunctive relief.¹¹ Therefore, the Magistrate Judge recommended that the Court dismiss Plaintiff's Section 1983 claims with prejudice until such time

⁶ Rec. Doc. 3.

⁷ *Id.*

⁸ *Id.* at 18.

⁹ Rec. Doc. 6 at 4 (citing *Heck v. Humphrey*, 512 U.S. 477 (1994)).

¹⁰ *Id.* (citing *Heck*, 512 U.S. at 486–87).

¹¹ *Id.* at 5.

as the *Heck* conditions are met.¹² To the extent the Complaint could be construed as a federal habeas corpus petition seeking relief pursuant to 28 U.S.C. § 2254, the Magistrate Judge noted that Plaintiff has already sought federal habeas relief and he must obtain authorization for a successive filing from the United States Court of Appeals for the Fifth Circuit before filing a successive habeas petition.¹³

Plaintiff objects to the Report and Recommendation.¹⁴ Plaintiff's requested that this Court "stay all decisions and actions" until Plaintiff receives a *de novo* review of his conviction "in light of the recent ruling of . . . *Ramos v. Louisiana*."¹⁵ Thereafter, Plaintiff filed four amended pleadings reasserting his claim that his constitutional rights were violated when he was convicted by a non-unanimous jury.¹⁶ Plaintiff reasserts his requests for damages, declaratory relief, and injunctive relief.¹⁷

II. Standard of Review

A. Review of the Magistrate Judge's Report and Recommendation

When designated by a district court to do so, a United States Magistrate Judge may consider prisoner petitions challenging the conditions of confinement and recommend his/her disposition to the district court judge in accordance with the Magistrate Judge's findings of fact and determinations of law.¹⁸ A district judge "may accept, reject or modify the recommended

¹² *Id.* at 5.

¹³ *Id.*

¹⁴ Rec. Doc. 7.

¹⁵ *Id.* (citation omitted).

¹⁶ Rec. Docs. 8, 9, 10, 11, 12.

¹⁷ *Id.*

¹⁸ 28 U.S.C. §636(b)(1)(B).

disposition” of a Magistrate Judge on a dispositive matter.¹⁹ The district judge must “determine de novo any part of the [Report and Recommendation] that has been properly objected to.”²⁰ However, a district court’s review is limited to plain error of parts of the report not properly objected to.²¹

B. Standard for Frivolousness

A district court has broad discretion in determining the frivolous nature of a prisoner’s complaint.²² A complaint is frivolous if it lacks an arguable basis in law or fact.²³ A claim has no arguable basis in law if “it is based on indisputable meritless legal theory.”²⁴ It lacks a basis in facts if “the facts alleged are clearly baseless.”²⁵ If a court finds a prisoner’s claims are frivolous, the court must dismiss the claims *sua sponte*.²⁶

III. Law and Analysis

Plaintiff’s objects to the Magistrate Judge’s recommendation that this Court dismiss his Section 1983 claims under the *Heck* doctrine.²⁷ Plaintiff requests this Court “stay all decisions and actions” until Plaintiff’s conviction is reviewed *de novo*.²⁸

In *Heck v. Humphrey*, the Supreme Court held:

¹⁹ Fed. R. Civ. P. 72(b)(3); see also 28 U.S.C. §636(b)(1).

²⁰ Fed. R. civ. P. 72(b)(3).

²¹ See *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996).

²² See *Talib v. Gilley*, 138 F.3d 211, 213 (5th Cir. 1998) (citations omitted).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ See 28 U.S.C. § 1915A; 42 U.S.C. §1997e(c).

²⁷ Rec Doc. 7.

²⁸ *Id.*

[I]n 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, 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, 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.²⁹

Additionally, *Heck* has been extended to claims for declaratory and injunctive relief.³⁰ If the judgment would imply the invalidity of the state court conviction the plaintiff's Section 1983 claims should be dismissed with prejudice until such time as the *Heck* conditions are met.³¹

A judgment on Plaintiff's Section 1983 claim that his conviction by a non-unanimous jury was unconstitutional would necessarily imply the invalidity of his state court conviction. Therefore, Plaintiff's Section 1983 claim must be dismissed with prejudice until such time as the *Heck* conditions are met.

It would be futile to construe the instant complaint in part as a federal habeas petition under 28 U.S.C. § 2254 because this Court lacks jurisdiction to consider such a petition. Plaintiff previously filed a Section 2254 petition challenging this same conviction that was dismissed with prejudice on the merits.³² This Court does not have jurisdiction to consider a second or successive

²⁹ *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994).

³⁰ *Clark v. Stalder*, 154 F.3d 186, 190–91 (5th Cir. 1998); *Walton v. Parish of LaSalle*, 258 F. App'x 633, 633–34 (5th Cir. 2007); *Collins v. Ainsworth*, 177 F. App'x 377, 379 (5th Cir. 2005).

³¹ See *DeLeon v. City of Corpus Christi*, 488 F.3d 649, 657 (5th Cir. 2007) (“A preferred order of dismissal in *Heck* cases decrees, ‘Plaintiff[']s claims are dismissed with prejudice to their being asserted again until the *Heck* conditions are met.’”).

³² *Farrier v. Vannoy*, No. 17-7955, 2018 WL 6651253 (E.D. La. Dec. 19, 2018).

habeas petition challenging that same state criminal judgment unless the petitioner has obtained authorization for such a filing from the United States Court of Appeals for the Fifth Circuit.³³ On October 19, 2020, the Fifth Circuit denied Petitioner's request for authorization to file a successive Section 2254 petition based on his claim that he was convicted by a non-unanimous jury.³⁴ Therefore, this Court does not have jurisdiction to consider a successive Section 2254 petition, and Plaintiff has not demonstrated that a stay of these proceedings is warranted while he seeks review of his conviction. In addition, the Supreme Court recently held that its decision in *Ramos v. Louisiana*, requiring that under the Sixth Amendment right to jury trial a state-court jury must be unanimous to convict a criminal defendant of a serious offense, does not apply retroactively on federal collateral review.³⁵

IV. Conclusion

For the foregoing reasons, Plaintiff's Section 1983 claim that his conviction by a non-unanimous jury was unconstitutional would necessarily imply the invalidity of his state court conviction. Therefore, Plaintiff's Section 1983 claims must be dismissed with prejudice until such time as the *Heck* conditions are met. Additionally, Plaintiff has not demonstrated that a stay of these proceedings is warranted while he seeks review of his conviction. Accordingly,

IT IS HEREBY ORDERED that the Court **OVERRULES** Plaintiff's objections and **ADOPTS** the Report and Recommendation.

³³ See 28 U.S.C. § 2244(b).

³⁴ See *Farrier v. Vannoy*, No. 20-30542 (5th Cir. Oct. 19, 2020).

³⁵ *Edwards v. Vannoy*, ---- S.Ct. ----, 2021 WL 1951781 (May 17, 2021).

IT IS FURTHER ORDERED that Plaintiff's Section 1983 claims are **DISMISSED WITH PREJUDICE** until such time as the *Heck* conditions are met.

NEW ORLEANS, LOUISIANA, this 1st day of June, 2021.

A handwritten signature in black ink that reads "Nannette Jolivet Brown". The signature is written in a cursive, flowing style.

NANNETTE JOLIVETTE BROWN
CHIEF JUDGE
UNITED STATES DISTRICT COURT