



five-year sentence, apparently referring to a sentence he received in the State of Arkansas. Docket No. 15. Plaintiff stated he had served both of these sentences. *Id.*

Plaintiff's motion to reopen was granted (Docket No. 18) and the Magistrate Judge issued a Report recommending the lawsuit be dismissed. Docket No. 19. The Magistrate Judge relied on the Supreme Court's opinion in *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994).

In *Heck*, the Supreme Court explained that “in order to recover damages for allegedly unconstitutional conviction or imprisonment, . . . 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.” *Heck*, 512 U.S. at 486–87. This rule applies even if the plaintiff has fully served his sentence and habeas corpus is no longer available, unless the plaintiff establishes that other procedural vehicles to attack the sentence are lacking. *Randell v. Johnson*, 227 F.3d 300, 301 (5th Cir. 2000); *Lavergne v. Brignac*, 654 F.App'x 177, (5th Cir. 2016).

Because Plaintiff has not shown the conviction and sentence he received from the Texas prosecution has been overturned or set aside or that he has no procedural vehicles available to challenge the conviction, the Magistrate Judge concluded his lawsuit was barred under *Heck*. Docket No. 19 at 5.

In addition, the Magistrate Judge observed that District Attorney Bobby Lockhart is shielded by prosecutorial immunity and that Plaintiff's claims against the Liberty-Eylau Independent School District were barred by the statute of limitations. *Id.*

Plaintiff received a copy of the Magistrate Judge's Report on February 27, 2017, and no objections have been filed. Accordingly, this Court reviews the Magistrate Judge's findings of

fact and conclusions of law for plain error. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc); see also *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), cert. denied, 492 U.S. 918, 109 S.Ct. 3243 (1989) (explaining that, when no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law.”).

The Court has reviewed the Magistrate Judge’s Report, the record, and all available evidence. This Court agrees with the Magistrate Judge that Plaintiff fails to state a claim because Plaintiff’s claims are barred by Heck. Finding no plain error in the Magistrate Judge’s Report, the Court hereby **ADOPTS** the Report of the Magistrate Judge as the opinion of this Court. It is further

**ORDERED** the above-styled civil action is **DISMISSED WITH PREJUDICE**<sup>1</sup> for purposes of proceeding in forma pauperis for failure to state a claim upon which relief may be granted as to the Defendants Bobby Lockhart and the Liberty-Eylau Independent School District. It is further

**ORDERED** the Plaintiff’s claims against Officer Griffin are **DISMISSED WITH PREJUDICE** until Plaintiff can show his conviction has been overturned, expunged by executive order, declared invalid in a state collateral proceeding or called into question through the issuance of a federal writ of habeas corpus. It is also

**ORDERED** that any and all motions which may be pending in this action are hereby **DENIED**.

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<sup>1</sup> The Magistrate Judge correctly recommended dismissal with prejudice; however, this dismissal with prejudice extends only to future proceedings in forma pauperis. See *Marts v. Hines*, 117 F.3d 1504, 1505 (5th Cir. 1997) (en banc) (dismissals under the in forma pauperis statute serve as res judicata for subsequent in forma pauperis filings but do not affect the subsequent filing of a fee-paid complaint raising the same allegations).

**SIGNED this 24th day of May, 2017.**

*Robert W. Schroeder III*  
ROBERT W. SCHROEDER III  
UNITED STATES DISTRICT JUDGE