

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

ANTHONY R. DAILEY, #60533-080 §
VS. § CIVIL ACTION NO. 6:13cv485
ROBERT JAMES MIDDLETON, ET AL. §

ORDER OF DISMISSAL

Plaintiff Anthony R. Dailey, an inmate confined at F.C.I. Gilmer, proceeding *pro se* and *in forma pauperis*, filed this civil lawsuit complaining about his bank robbery and aiding and abetting convictions in Case Number 6:04cr67-001. He alleged that he was subjected to an illegal search and seizure, false imprisonment, a denial of due process, and a denial of equal protection. The complaint was referred to United States Magistrate Judge K. Nicole Mitchell, who issued a Report and Recommendation concluding that complaint is barred by *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). Alternatively, any claims not barred by *Heck* would be time-barred. Dailey has filed objections.

Dailey argued that his lawsuit is not barred by *Heck* in light of the Supreme Court's recent decision in *Skinner v. Switzer*, 131 S. Ct. 1289 (2011). *Skinner*, however, is of no help to him. The Supreme Court simply held that an inmate could proceed with his request for D.N.A. testing in a civil rights lawsuit despite *Heck*. *Id.* at 1298. It was noted that “[s]uccess in his suit for DNA testing would not ‘necessarily imply’ the invalidity of his conviction.” *Id.* By comparison, Dailey’s lawsuit is a direct challenge to his convictions and success in this case would necessarily imply the invalidity of the convictions. *Skinner* does not provide a gateway for Dailey to proceed on his claims. The lawsuit is barred by *Heck*.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Dailey to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections raised by Dailey are without merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the complaint is **DISMISSED** pursuant to 28 U.S.C. § 1915A(b)(1). To the extent that a judgment in favor of Dailey would necessarily imply the invalidity of his convictions, Dailey's claims are **DISMISSED** with prejudice to their being asserted again until the *Heck* conditions are met. All other claims are **DISMISSED** with prejudice for all purposes. It is finally

ORDERED that all motions not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 24th day of September, 2013.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE