

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 1, 2026

Christopher M. Wolpert
Clerk of Court

STEVEN MONTRAIL TRIPLET,

Plaintiff - Appellant,

v.

VAN NINH, individual and official
capacities as Officer #219; KYLE CROFT,
individual and official capacities as
Sergeant #88; JACOB EMBERY,
individual and official capacities, as
Midwest City Police Officer #0002;
CITY OF MIDWEST CITY; MIDWEST
POLICE DEPARTMENT,

Defendants - Appellees.

No. 25-6201
(D.C. No. 5:24-CV-00659-JD)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, **MATHESON**, and **PHILLIPS**, Circuit Judges.

Steven Montrail Triplet, an Oklahoma state prisoner appearing pro se, seeks to appeal the district court's dismissal of his 42 U.S.C. § 1983 lawsuit against three police officers and the police department and city that employ them. Exercising

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

jurisdiction under 28 U.S.C. § 1291, we conclude that Mr. Triplet waived appellate review by failing to timely object to the magistrate judge's recommendation that the case be dismissed.

I. BACKGROUND

A. Factual Background¹

Mr. Triplet and his girlfriend, Alicia Rogers, got into a domestic dispute in the late evening hours of January 23, 2024. Ms. Rogers called 911. Midwest City police officers responded to their apartment in the early morning hours of January 24, 2024, and spoke with Mr. Triplet.

The officers later prepared an affidavit and presented it to a judge who issued a warrant for Mr. Triplet's arrest. Mr. Triplet was arrested and charged in the District Court of Oklahoma County with one count of child neglect and one count of domestic abuse (assault and battery).

Mr. Triplet ultimately pleaded guilty to the child neglect charge and was sentenced to thirty years' imprisonment, "with all but the first ten years suspended to be served concurrently with his sentences in two other cases." R. vol. I at 118.

B. Procedural Background

In June 2024, Mr. Triplet, while in pretrial detention on the Oklahoma County criminal charges, initiated this action by filing a pro se prisoner civil rights complaint against three Midwest City police officers in their official and individual capacities.

¹ The facts are drawn from Mr. Triplet's complaint, amended complaint, and the documents he submitted in support of those complaints.

Little more than a month after filing his complaint, Mr. Triplet filed an amended complaint against the same three officers, as well as the City of Midwest City and the Midwest City Police Department.

The amended complaint alleged that the officers violated Mr. Triplet's rights under the Fourth and Fourteenth Amendments by unlawfully entering his apartment, burglarizing it, endangering his minor child, unreasonably searching his apartment, preparing a false affidavit that resulted in false charges against him, and arresting him in connection with those charges. It also alleged that two of the officers and the Midwest City Police Department violated his rights by refusing to turn over video recordings of their contact with him in his apartment. Mr. Triplet sought declaratory, injunctive, and monetary relief, and also asked that criminal charges be filed against the defendants.

The magistrate judge ("MJ") screened the amended complaint under 28 U.S.C. § 1915A(a) and recommended that the court abstain from exercising jurisdiction over the case under the *Younger* abstention doctrine until the State of Oklahoma resolved its criminal prosecution against Mr. Triplet. *See Younger v. Harris*, 401 U.S. 37 (1971). The district court accepted the MJ's report and recommendation and issued an order administratively closing the case until the state criminal proceedings were concluded.

In July 2025, Mr. Triplet moved to reopen the case. The district court granted that motion, reopened the case, and referred it to the MJ for further proceedings.

In August 2025, the MJ issued a report and recommendation recommending the dismissal of Mr. Triplet’s amended complaint. The MJ first noted that Mr. Triplet “pleaded guilty to one count of child neglect” and was sentenced “to thirty years with all but the first ten years suspended to be served concurrently with his sentences in two other cases.” R. vol. I at 118. The MJ further noted that Mr. Triplet “did not file a direct certiorari appeal of his judgment and sentence and he” informed “the Court that his conviction is ‘final.’” *Id.* at 119. The MJ then reviewed the amended complaint and noted the first four claims were based on allegations that two of the defendants “unlawfully entered [Mr. Triplet’s] apartment without a warrant and wrongfully arrested and charged him because of a ‘false affidavit.’” *Id.* at 122. The MJ also noted that the fifth claim was based “on allegations that the Midwest City Police Department refused to turn over favorable evidence related to his charges.” *Id.* The MJ concluded that compensating Mr. Triplet “for an allegedly illegal search and seizure and false arrest would certainly imply that his state court criminal conviction is invalid.” *Id.* The MJ therefore concluded that Mr. Triplet’s claims for monetary relief were barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). The MJ concluded that Mr. Triplet’s claims for injunctive and declaratory relief were likewise barred by *Heck* to the extent they “implicate[d] the invalidity of his state court conviction,” and that, in any event, those claims were “moot” because they effectively asked the court to “prohibit any further violations of his federal constitutional rights by Defendants.” R. vol. I at 123 & n.5 (internal quotation marks omitted). Finally, the MJ noted that the district court

could not “issue criminal charges” against the defendants as requested by Mr. Triplet because “there is no constitutional right to have someone criminally prosecuted.” *Id.* at 124 (internal quotation marks omitted).

Mr. Triplet filed a motion to amend his complaint but did not file written objections to the MJ’s report and recommendation.

In November 2025, the district court issued an order accepting the MJ’s report and recommendation and dismissing the action without prejudice. The district court noted that Mr. Triplet did not file any objections to the report and recommendation, and it declined to construe his motion to amend his complaint as objections to the report and recommendation. The district court also noted that the MJ advised Mr. Triplet “of the time period for objecting and the consequences of failing to timely object.” *Id.* at 131. The district court concluded “[t]he interests of justice d[id] not require review, as [Mr. Triplet] has not explained [his] effort to comply or [his] lack of objection.” *Id.* at 131-32. The district court also noted that, in any event, it had “review[ed] the record and law *de novo*” and concluded the report and recommendation “should be adopted in full.” *Id.* at 132.

II. DISCUSSION

The threshold question we must address is whether Mr. Triplet has waived appellate review. “This court has adopted a firm waiver rule under which a party who fails to make a timely objection to the magistrate judge’s findings and recommendations waives appellate review of both factual and legal questions.” *Morales-Fernandez v. I.N.S.*, 418 F.3d 1116, 1119 (10th Cir. 2005); *see Thomas v.*

Arn, 474 U.S. 140, 155 (1985) (“hold[ing] that a court of appeals may adopt a rule conditioning appeal, when taken from a district court judgment that adopts a magistrate’s recommendation, upon the filing of objections with the district court identifying those issues on which further review is desired”). “This rule does not apply, however, when (1) a pro se litigant has not been informed of the time period for objecting and the consequences of failing to object, or when (2) the interests of justice require review.” *Morales-Fernandez*, 418 F.3d at 1119 (internal quotation marks omitted).

The first exception does not apply in this case. The MJ’s report and recommendation advised Mr. Triplet “of his right to file an objection to” the report and recommendation “on or before September 16, 2025,” and “further advise[d] [him] that failure to make a timely objection . . . waive[d] the right to appellate review of both factual and legal questions contained” in the report and recommendation. R. vol. I at 125. Thus, the MJ plainly advised Mr. Morales of the consequences of failing to object.

As for the interests of justice exception, we have sometimes applied “the plain error test” to determine “whether a miscarriage of justice has occurred.” *Morales-Fernandez*, 418 F.3d at 1122. “Plain error occurs when there is (1) error, (2) that is plain, which (3) affects substantial rights, and which (4) seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.* at 1122-23 (internal quotation marks omitted).

After reviewing the record, we are not persuaded that the district court erred, let alone committed plain error, in dismissing Mr. Triplet's amended complaint. To begin with, the district court relied on our own firm waiver rule and concluded that neither exception to that rule applied. In an alternative holding, the district court agreed with the MJ that most of the claims in the amended complaint were barred by *Heck* until such time that Mr. Triplet could demonstrate that his conviction had been invalidated, that the claims for injunctive and declaratory relief were moot, and that Mr. Triplet's request for criminal charges to be filed against the named defendants was unsupported by federal law. Nothing in the record or Mr. Triplet's appellate brief persuades us that these conclusions were incorrect.

We have also, at times, considered three other factors in determining whether the interests of justice exception applies: (1) the pro se litigant's effort to timely object to the magistrate judge's report and recommendation, (2) the force and plausibility of the explanation for his failure to timely object, and (3) the importance of the issues raised. *See Johnson v. Reyna*, 57 F.4th 769, 778 (10th Cir. 2023). Here, those three factors do not persuade us that the interests of justice exception should be applied. To begin with, Mr. Triplet's appellate brief contains no mention of his failure to object to the magistrate judge's report and recommendation and thus fails to address the first two factors. And, in any event, we are not persuaded that the issues he seeks to raise on appeal warrant our invocation of the interests of justice exception.

We therefore conclude that the firm waiver rule applies and bars Mr. Triplet's appeal of the district court's order.

III. CONCLUSION

We affirm the judgment of the district court. We also grant Mr. Triplet's motion to proceed in forma pauperis on appeal and remind him that he is obligated to continue making partial payments until the entire fee has been paid.

Entered for the Court

Gregory A. Phillips
Circuit Judge