

THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

HENRY JOINER, #140 755)	
)	
Plaintiff,)	
)	
v.)	2:10-CV-426-TMH
)	WO
COMMISSIONER, RICHARD F. ALLEN, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

On June 4, 2010, the Magistrate Judge filed a Recommendation (Doc. 5) in this case to which no timely objections have been filed.¹ Upon an independent review of the file in this case and upon consideration of the Recommendation of the Magistrate Judge, it is ORDERED that:

1. The Recommendation (Doc. 5) of the Magistrate Judge is ADOPTED;
2. The motion for leave to proceed *in forma pauperis* is DENIED; and
3. This case be DISMISSED without prejudice for Plaintiff's failure to pay the full filing fee upon the initiation of this case.

¹On June 17, 2010, Plaintiff filed a Notice of Appeal (Doc. 6) as to the Recommendation. On June 21, 2010, the Court construed the Notice as a motion for leave to appeal in forma pauperis, and denied the motion (Doc. 7). “[A] premature notice of appeal does not divest the district court of jurisdiction over the case,” *United States v. Kapelushnik*, 306 F.3d 1090, 1094 (11th Cir.2002), and “[a]n attempt to appeal a non-appealable order remains just that, an attempt[,] ... [and] a nullity,” *id.* (internal quotation marks omitted). Because a Magistrate Judge's recommendation is not an appealable order under § 1292, this court may rule on the recommendation despite the notice of appeal.

Done this 20th day of September, 2010.

/s/ Truman M. Hobbs

SENIOR UNITED STATES DISTRICT JUDGE