

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

TOMMY BASS,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:12-cv-280-TMH
)	
SARAH P. FAULK,)	
)	
Defendant.)	

ORDER

The Magistrate Judge has entered a Report and Recommendation (Doc. # 4) supporting dismissal of Tommy Bass’s claim against Sarah Faulk. I agree with the recommendation and will adopt it as an order of this Court except to the extent it recommends dismissing Bass’s claim with prejudice. I write only to clarify why Mr. Bass’s claim fails and to modify the recommendation so as to dismiss his claim without prejudice.

For a prisoner to state a § 1983 claim for the intentional deprivation of his property by a prison official, he has to first ask the state to remedy the wrong. Under Alabama law, this means Bass has to submit his claim that Ms. Faulk stole \$40 from him to the Alabama Board of Adjustment. *See* Ala. Code § 41-9-60. If the Board fails to provide him with adequate means to seek redress for the alleged wrong, he can then file a due process complaint under § 1983. *See Hudson v. Palmer*, 468 U.S. 517, 533 (1984)

(requiring state to provide adequate post-deprivation relief before prisoner can press a § 1983 claim). Because Bass's complaint does not allege that he tried to take the route provided for under Alabama law, his claim fails for the reasons discussed in the Magistrate Judge's Recommendation. Even so, he should have the opportunity to re-file his claim if he can truthfully make the necessary allegations. Therefore, the recommendation should be modified to dismiss his claim without prejudice.

Accordingly, it is ORDERED that the Recommendation (Doc. # 4) of the Magistrate Judge is ADOPTED IN PART and MODIFIED IN PART. Specifically, it is modified to reflect that Bass's complaint is DISMISSED without prejudice prior to service. *See* 28 U.S.C. § 1915(e)(2)(B)(i).

Done this the 11th day of May, 2012.

/s/ Truman M. Hobbs

SENIOR UNITED STATES DISTRICT JUDGE