

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

ORLANDO SAMUEL McKEITHEN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 3:11cv190-WHA
	)	
CATHY JACKSON, et al.,	)	(WO)
	)	
Defendants.	)	

**ORDER**

This case is before the court on the Recommendation of the Magistrate Judge (Doc. #9), entered on April 7, 2011, and the Motion for Leave to Construe the Amended Complaint as a Written Objection to the Recommendation of the Magistrate Judge (Doc. #13), filed on April 15, 2011.

Upon a *de novo* review of the entire file, the court finds that the Magistrate Judge has denied the Plaintiff’s Motion to Amend as to Defendant Carlton in light of the Plaintiff’s statement that he seeks to sue Warden James Carlton in his official capacity. The court GRANTS the Motion for Leave to Construe, concurs with the Magistrate Judge’s denial of the Motion to Amend as to Defendant Carlton, overrules the objection, and adopts the Recommendation of the Magistrate Judge. Therefore, it is hereby ORDERED as follows:

1. Plaintiff’s Complaint against Defendants Allen and Carlton is DISMISSED with prejudice and prior to service of process pursuant to the provisions of 28 U.S.C. § 1915(e)(2)(B)(i) and (ii).
2. Defendants Allen and Carlton are DISMISSED as parties to the Complaint.

3. This case is referred back to the Magistrate Judge for further proceedings with regard to the remaining Defendants.

DONE this 19th day April, 2011.

/s/ W. Harold Albritton  
W. HAROLD ALBRITTON  
SENIOR UNITED STATES DISTRICT JUDGE