

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

DAVID LUCAS,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:11-cv-01209-VEH-JEO
)	
WARDEN EDWARDS, et. al.,)	
)	
Defendants.)	

MEMORANDUM OF OPINION

The magistrate judge filed a report and recommendation on July 7, 2014, recommending that the defendants' motion for summary judgment be granted and this cause be dismissed with prejudice. The plaintiff filed objections on July 15, 2014. (Doc. 27).

The plaintiff contends that the Magistrate Judge erred by concluding that the dismissal of his state court civil action for lack of prosecution after he failed to submit funds to cover the estimated costs of preparing the record on appeal, as ordered, was due to his failure to submit the funds. (Doc. 27). The plaintiff argues that the order of dismissal did not specifically state that his failure to pay for the costs of preparing the record was the reason the case was being dismissed for lack of prosecution, even though the dismissal followed an order advising the plaintiff that he must make financial arrangements for the payment of the costs associated with the appeal within seven days or face dismissal. *Id.* In the state court action, the plaintiff challenged a 2004 prison disciplinary, which resulted in no loss of good time, on the grounds that the Department of Corrections violated its own rules and procedures governing the hearing. The undersigned finds that, even if the dismissal was not, as all evidence indicates, due to plaintiff's failure to comply with the court's order to arrange payment for the record, the plaintiff has still failed to allege facts sufficient to support his contention that his

lack of legal materials caused the dismissal or that he was otherwise prevented, due to the defendants' actions, from pursuing a "non-frivolous direct criminal appeal, habeas petition, or civil rights action." *Lewis v. Casey*, 518 U.S. 343, 354 (1996).

Thus, having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections filed by the plaintiff, the Court is of the opinion that the plaintiff's objections are **OVERRULED**, the magistrate judge's report is due to be and is hereby **ADOPTED**, and his recommendation is **ACCEPTED**. The Court **EXPRESSLY FINDS** that there are no genuine issues of material fact and that the defendants are entitled to judgment as a matter of law. Accordingly, defendants' motion for summary judgment is due to be **GRANTED** as to all of the plaintiff's federal claims and such claims are due to be **DISMISSED WITH PREJUDICE**. Further, the undersigned agrees that, as no federal claims remain pending, it is appropriate to, and the court will, **DISMISS** plaintiff's state law claims **WITHOUT PREJUDICE**. A Final Judgment will be entered.

DONE this the 20th day of August, 2014.



VIRGINIA EMERSON HOPKINS
United States District Judge