

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

CHARLES HARRIS SHARPLEY,)

Plaintiff)

vs.)

Case No. 5:12-cv-00044-LSC-HGD

JUDGE LAURA JO HAMILTON,)

et al.,)

Defendants)

MEMORANDUM OF OPINION

The magistrate judge filed a report on July 26, 2012 , recommending that this action be dismissed without prejudice for failing to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1) and (2). The plaintiff filed objections to the report and recommendation on August 10, 2012. (Doc. 8). Although this action was filed on the form normally used by prisoners to assert monetary or injunctive relief claims for violations of constitutional rights, the plaintiff now asserts that he did not intend to file this action as a § 1983 claim, but is seeking relief from his conviction and sentence based upon an alleged denial of due process and ineffective assistance of counsel. *Id.* at 3. As the magistrate judge correctly

pointed out, the plaintiff may challenge the fact or duration of his confinement only by way of a petition for writ of *habeas corpus* and only after first exhausting adequate state remedies. He therefore may not pursue such remedies in this § 1983 action, but must file a **separate** *habeas corpus* petition on the forms provided with this order. Accordingly, this action is due to be dismissed without prejudice as recommended by the magistrate judge.

Therefore, having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections thereto, the court is of the opinion that the magistrate judge's report is due to be and is hereby ADOPTED and the recommendation is ACCEPTED. This action is due to be dismissed without prejudice for failing to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1) and (2). A Final Judgment will be entered.

The Clerk is DIRECTED to serve a copy of this order **and two copies of the § 2254 habeas petition form** on the plaintiff.

Done this 21st day of August 2012.



L. SCOTT COOGLER
UNITED STATES DISTRICT JUDGE
160704