

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

SAMUEL JOHNSON,)	
)	
Plaintiff,)	
)	
v.)	Case No. 7:13-cv-00633-JHH-PWG
)	
DONNA HOUSE,)	
)	
Defendant.)	

MEMORANDUM OF OPINION

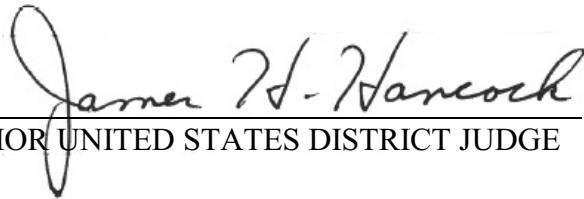
The magistrate judge filed a report and recommendation on November 4, 2013, recommending that this action filed pursuant to 42 U.S.C. § 1983 be dismissed under 28 U.S.C. § 1915A(b) for failing to state a claim upon which relief may be granted. On November 13, 2013, the plaintiff filed objections to the report and recommendation. The plaintiff disagrees with the court’s finding that he failed to allege facts sufficient to show that defendant’s actions were done maliciously and sadistically with the intent to cause pain and/or humiliation in violation of his Eighth Amendment Rights.

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. The court concurs with the magistrate judge’s findings that the plaintiff failed to allege facts sufficient to demonstrate that the defendant had a subjectively culpable state of mind when she grabbed the plaintiff’s penis and pulled it through a hole in his pants; in his complaint, the plaintiff himself states that she did so in order to show the correctional officers how she believed him to have been masturbating in her presence. Moreover, the court also concurs with the magistrate

judge's conclusion that, although the touching of the plaintiff by the defendant was certainly inappropriate and unprofessional, the one isolated incident as described by the plaintiff was not repugnant to the conscience of humanity, and thus did not rise to the level of a constitutional harm.

Accordingly, the complaint is due to be dismissed pursuant to 28 U.S.C. § 1915A(b) for failing to state a claim upon which relief may be granted. A Final Judgment will be entered.

DONE this the 20th day of November, 2013.



James H. Hancock

SENIOR UNITED STATES DISTRICT JUDGE