

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

<b>KENNETH TONEY, AIS #208227,</b>	:	
<b>Plaintiff,</b>	:	
<b>vs.</b>	:	<b>CIVIL ACTION 07-00079-CG-B</b>
<b>LT. FUQUA,</b>	:	
<b>Defendant.</b>	:	

**ORDER**

After due and proper consideration of all portions of this file deemed relevant to the issue raised, and there having been no objections filed, the Report and Recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B) is **ADOPTED** as the opinion of this Court. It is **ORDERED** that this action be and is hereby **DISMISSED without prejudice** for failure to state a claim upon which relief can be granted and because it frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii).

The Clerk is **DIRECTED** to send to the Commissioner of the Alabama Department of Corrections a copy of the Report and Recommendation recommending the dismissal of this action as for failure to state a claim upon which relief can be granted, and as frivolous, of this Order adopting the Report and Recommendation, and of the Judgment dismissing this action for failure to state a claim upon which relief can be granted, and as frivolous.

**DONE and ORDERED** this 20<sup>th</sup> day of May, 2009.

/s/ Callie V. S. Granade

**CHIEF UNITED STATES DISTRICT JUDGE**

