

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

**ANDREW JACKSON SMITH,  
AIS# 228252,**

:

**Plaintiff,**

:

**vs.**

: **CIVIL ACTION 07-0268-CG-B**

**TROY KING, et al.,**

:

**Defendants.**

:

**ORDER**

After due and proper consideration of all portions of this file deemed relevant to the issues raised, and a de novo determination of those portions of the Report and Recommendation to which objection is made, 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. The Court finds that the issues plaintiff seeks to raise on appeal, are “without arguable merit in law or fact,” and therefore are not brought in good faith. Therefore, plaintiff’s motion for leave to appeal in forma pauperis is **DENIED**.<sup>1</sup>

**DONE and ORDERED** this 4<sup>th</sup> day of May, 2010.

/s/ Callie V. S. Granade

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CHIEF UNITED STATES DISTRICT JUDGE

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<sup>1</sup> This matter is currently on remand from the 11<sup>th</sup> Circuit Court of Appeals for a determination of fact which will determine the timeliness of the appeal. That finding will be made, and the case returned for consideration by the Court of Appeals, once the factual evidence is obtained necessary for the finding.