

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

<b>FRANK LEE BACK, AIS # 147599,</b>	:	
<b>Plaintiff,</b>	:	
<b>vs.</b>	:	<b>CIVIL ACTION 07-0638-KD-M</b>
<b>BRAXTON KITTRELL, et al.,</b>	:	
<b>Defendants.</b>	:	

**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. It is **ORDERED** that this action be and is hereby **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii) because Plaintiff's claims are either frivolous or fail to state a claim upon which relief may be granted.

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, this Order adopting the Report and Recommendation, and the Judgment dismissing this action.

DONE this 16th day of December, 2008.

s/ Kristi K. DuBose  
KRISTI K. DuBOSE  
UNITED STATES DISTRICT JUDGE