

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

RICHARD DARON KENNEDY, # 196984, :
Plaintiff, :
vs. : CIVIL ACTION 08-0169-CG-M
JUDGE JOHN R. LOCKETT, 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. It is **ORDERED** that this action be and is hereby **DISMISSED** with prejudice as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(I).

After the Report and Recommendation was issued, the petitioner filed additional motions to amend the complaint to add new parties and based on evidence of a “new conspiracy” (Docs. 24, 25). As with the previous amended complaints, this one is screened under 28 U.S. C. §1915(e)(2)(B). It is clear from a review of the motions that the proposed amended complaint is frivolous. It alleges a conspiracy in the Mobile County District Attorney’s Office to improperly influence Montgomery County Circuit Judge Eugene Reese , and is based entirely on Judge Reese’s granting of the District Attorney’s Motion to Dismiss or In the Alternative for Summary Judgment. To avoid dismissal for failure to state a claim upon which relief can be granted, the allegations must show plausibility . Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1966

(2007). “Factual Allegations must be enough to raise a right to relief above the speculative level.” *Id.* at 1965. The allegation of a conspiracy in the proposed amended complaint is pure speculation and fails to state a claim upon which relief can be granted. Accordingly, the motions to amend, (Doc. 24, 25), as well as the accompanying Motion for Service on Defendants (Doc. 28), are hereby **DENIED**.

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

DONE and ORDERED this 8th day of June, 2009.

/s/ Callie V. S. Granade
CHIEF UNITED STATES DISTRICT JUDGE