

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

**PHILLIP RAY HARKLESS, # 266580, :**  
**Plaintiff, :**  
**vs. : CIVIL ACTION 11-0530-CG-N**  
**DEBORAH TONEY, et al., :**  
**Defendants. :**

**ORDER**

After due and proper consideration of all portions of this file deemed relevant to the issues raised, and there having been no objection 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, prior to service of process, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure 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 and ORDERED** this 5th day of June, 2012.

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