

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

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Allen Rheame, )

Plaintiff, )

v. )

Case No. 5:11-cv-72

Andrew Pallito, Susan Onderwyzer, )

Jackie Kotkin, David Peebles, )

Michele Young, Cullen Bullard, )

Keith Talon, Krista Prior, )

Marshall Rich, Tom Rowden, )

Sandra Olberg, Tammy Kennison, )

Georgia Cummings, Jerri Brouillette, )

Tammy Smith, Steve Hoke, )

Anita Carbonell, Lynn Roberto, )

Sue Random Kelly, Edward Holtrop, )

and Heather Ward, )

Defendants. )

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION**

(Docs. 43, 48, 54 and 56)

This matter came before the court for a review of the Magistrate Judge's July 13, 2012 Report and Recommendation (R & R) in regards to three motions filed by the parties. Defendants, who are officials at the Vermont Department of Corrections, have moved to dismiss Plaintiff Allen Rheame's claims for violations of the Eighth and Fourteenth Amendments. Mr. Rheame, a self-represented Vermont inmate, has moved to amend his complaint to include new Eighth and Fourteenth Amendment claims as well as a state law claim. Mr. Rheame has further filed a motion requesting the appointment of *pro bono* counsel. Neither party has objected to the R & R, and the deadline for doing so has expired.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. FED. R. CIV. P. 72(b); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See Campbell v. United States Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974), *cert. denied*, 419 U.S. 879 (1974).

In his seventeen page R & R, the Magistrate Judge carefully reviewed the factual record and the three motions before the court. He determined that Mr. Rheume's claims for Eighth and Fourteenth Amendment violations should be dismissed. He further determined that Mr. Rheume should not be permitted to amend his complaint to allege an additional Eighth Amendment violation, but that the other proposed amendments should be permitted. Finally, he recommended that the court deny Mr. Rheume's motion to appoint counsel.

The court agrees with the Magistrate Judge's conclusions. For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge's R & R as the court's Order and Opinion, GRANTS Defendants' motion to dismiss, DENIES the motion to amend Mr. Rheume's complaint to add an Eighth Amendment claim, otherwise GRANTS the motion to amend, and DENIES without prejudice Mr. Rheume's motion to appoint counsel. A First Amended Complaint has been filed with the court, and Defendants are required to file a response to the First Amended Complaint within seventeen (17) days of this court's Order.

SO ORDERED.

Dated at Rutland, in the District of Vermont, this 14<sup>th</sup> day of August, 2012.



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Christina Reiss, Chief Judge  
United States District Court