

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

---

GREGORY GALBERTH,

Plaintiff,

v.

9:14 -CV-0115 (BKS/ATB)

C. Durkin, *Sergeant, Clinton Correctional  
Facility, et al.,*

Defendants.

---

APPEARANCES:

OF COUNSEL:

Gregory Galberth, *Plaintiff pro se*  
03-A-0661  
Great Meadow Correctional Facility  
Box 51  
Comstock, NY 12821

HON. ERIC T. SCHNEIDERMAN  
*Attorney for Defendants*  
Office of the New York State Attorney General  
The Capitol  
Albany, NY 12224

JOSHUA E. MCMAHON  
Assistant Attorney General

BRENDA K. SANNES, U. S. DISTRICT JUDGE

**ORDER**

The above matter comes to me following a Report-Recommendation by Magistrate Judge Andrew T. Baxter, duly filed on the 8<sup>th</sup> day of December, 2014. Following fourteen (14) days from the service thereof, the Clerk has sent me the file. No objections were filed to the Report-Recommendation.

After careful review of all of the papers herein, including the Magistrate Judge's Report-

Recommendation, and no objections submitted thereto, it is

ORDERED that:

1. The Report-Recommendation is hereby adopted in its entirety;
2. The defendants' motion to dismiss (Dkt. No. 30) is GRANTED only to the extent that plaintiff bases his claims on the Fourteenth Amendment;
3. The defendant's motion to dismiss (Dkt. No. 30) is DENIED IN ALL OTHER RESPECTS; and
4. The Clerk of the Court shall serve a copy of this Order upon all parties and the Magistrate Judge assigned to this case.

**IT IS SO ORDERED.**

Dated: December 31, 2014  
Syracuse, New York



**Brenda K. Sannes**  
U.S. District Judge