

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT**

**Joshua Rheaume,
Plaintiff**

v.

**Keith Tallon, Dominic Damato,
and Unknown Corrections Officers
and Shift Supervisors,
Defendants**

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File No. 1:07-cv-262

ORDER

The Magistrate Judge's Report and Recommendation was filed January 5, 2009. (Paper 36.) After de novo review and absent objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1).

The motion to dismiss filed on behalf of defendants Keith Tallon and Dominic Damato (Paper 23) is GRANTED. Because jurisdiction over plaintiff's negligence claims lies exclusively in state court, those claims are DISMISSED without prejudice. Because plaintiff has failed to allege specific facts to support a constitutional claim against the unknown defendants, those claims are DISMISSED without prejudice.

It is further certified that any appeal taken in forma pauperis from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 12th day of February,
2009.

/s/ J. Garvan Murtha

Honorable J. Garvan Murtha
United States District Judge