

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

CHRISTOPHER J. CAFFERKY,
Plaintiff,

v.

ANDREW PALLITO,
Defendant.

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File No. 1:09-cv-00193-jgm

ORDER

The Magistrate Judge's Report and Recommendation was filed July 1, 2010. (Doc. 19.) After de novo review and absent objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1).

Defendant's Motion to Dismiss (Doc. 9) is GRANTED. Plaintiff shall be allowed 30 days from the date of this Order to file an amended complaint. Failure to file an amended complaint on or before August 30, 2010 will result in the dismissal of this case with prejudice. Plaintiff's Motion for Injunction on the Department of Corrections (Doc. 11), construed as a motion for release from state custody, is DENIED.

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 29th day of July, 2010.

/s/ J. Garvan Murtha

Honorable J. Garvan Murtha
Senior United States District Judge