

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

**DAVID BARRON,**

**Petitioner,**

**v.**

**ANDREW PALLITO and VERMONT  
DEPARTMENT OF CORRECTIONS,**

**Respondents.**

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**File No. 1:12-cv-92-jgm-jmc**

**ORDER**

The Magistrate Judge's Report and Recommendation was filed January 28, 2013. (Doc. 9.) 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 unexhausted claims asserted in the Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus (Doc. 4) are hereby DISMISSED without prejudice. Respondents shall file a supplemental response to the Petition on or before April 5, 2013. The response shall be limited to Barron's exhausted claims as described in the Report and Recommendation, and shall address the question of whether the Vermont Supreme Court's rulings were "contrary to, or involved an unreasonable application of, clearly established Federal law" or "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d).

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 5<sup>th</sup> day of March, 2013.

/s/ J. Garvan Murtha  
Honorable J. Garvan Murtha  
United States District Judge