

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

JUSTIN L. BYRNE,
Plaintiff,

v.

**MARY TRUDELL, JENNA GOGUEN,
JOANNE PEREIRA, TOM DUNN,
ANDREW PALLITO, JEFFREY LEGGIO,
and DAVE NESBITT,**
Defendants.

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File No. 1:12-cv-245-jgm-jmc

ORDER

The Magistrate Judge's Report and Recommendation was filed March 18, 2013. (Doc. 24.) After de novo review and over objection, the Report and Recommendation is **AFFIRMED, APPROVED and ADOPTED**. See 28 U.S.C. § 636(b)(1).

Defendants' Motion to Dismiss (Doc. 12) is **GRANTED** in part and **DENIED** in part as follows:

1. Pursuant to the doctrine of sovereign immunity, to the extent Plaintiff brings his § 1983 claims against Defendants Pallito and Pereira for money damages in their official capacities, those claims are **DISMISSED**.

2. Due to their lack of personal involvement, the Fourteenth Amendment claims against Defendants Pereira and Dunn, as well as the Eighth and Fourteenth Amendment claims against Defendants Leggio and Nesbitt are **DISMISSED**.

3. All Eighth Amendment claims are **DISMISSED** for failure to allege violation of a federal right.

4. The Fourteenth Amendment claims against Defendants Leggio and Nesbitt are **DISMISSED** for failure to allege violation of a federal right.

5. Pursuant to Heck v. Humphrey, 512 U.S. 477 (1994), to the extent Plaintiff seeks immediate release from incarceration, this request for relief is DISMISSED.

6. All claims for punitive damages claims against Defendants Leggio, Nesbitt, Pallito, Pereira, and Dunn are DISMISSED.

7. Pursuant to the Vermont Tort Claims Act, all state tort claims against Defendants Pallito, Pereira, and Dunn are DISMISSED.

8. All remaining bases on which Defendants move to dismiss Plaintiff's claims are DENIED.

9. Plaintiff's "Motion to Strike Pursuant to Rule 12(f)(2)" (Doc. 17) is DENIED.

This matter is returned to Magistrate Judge John M. Conroy for further proceedings.

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 21st day of May, 2013.

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