

STATE OF VERMONT

**SUPERIOR COURT
Washington Unit**

**CIVIL DIVISION
Docket No. 614-10-14 Wncv**

**KENNETH BAILEY
Plaintiff**

v.

**ANDREW PALLITO
Defendant**

ENTRY

Inmate Kenneth Bailey claims that, while incarcerated in an out-of-state facility, he repeatedly warned Defendant Andrew Pallito and other corrections officials that he was at risk of attacks by other inmates, that he in fact was repeatedly attacked and injured as he had warned, and that corrections officials never acted to protect him other than to offer to place him in segregation. He alleges that he eventually was transferred to a safer facility and has not been attacked since. He seeks monetary damages only in this case. The complaint and Mr. Bailey's other filings are unclear as to whether he is attempting to bring state tort law claims or constitutional claims pursuant to 42 U.S.C. § 1983—or both. They also are unclear as to whether he is suing Defendant Pallito in his individual or official capacity—or both. Several of Mr. Bailey's assertions are contradictory in these regards.

Defendant has filed a motion to dismiss on absolute immunity grounds. There can be no question that Defendant Pallito has absolute immunity. See *Curran v. Marcille*, 152 Vt. 247, 248–49 (1989) (explaining that the Commissioner of the Vermont Department of Corrections is a high-level official with absolute immunity to a common law negligence claim). However, this immunity doctrine applies only to state law claims against defendants in their individual capacity. See *id.* at 248 (explaining that sovereign immunity is the applicable doctrine for claims against the State); Sec. 1983 Litig. Claims & Defenses § 9.01(b)[2] (explaining that “state law immunity defenses and privileges do not apply” to federal § 1983 claims).

Accordingly, any state tort law claims asserted by Mr. Bailey against Defendant Pallito in his individual capacity are dismissed. No other claims Mr. Bailey may be attempting to raise are addressed by Defendant's motion or this decision.

Defendant's motion to dismiss is thus granted in part and denied in part.

Dated this ____ day of September 2015.

Mary Miles Teachout
Superior Judge