

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

CHRISTOPHER A. IRELAND :
 :
 Plaintiff :
 : **CIVIL ACTION NO. 1:10-1689**
 v. :
 : **(CONNER, D.J.)**
 PA BOARD OF PROBATION AND : **(MANNION, M.J.)**
 PAROLE, *et. al.*, :
 :
 Defendants.

REPORT AND RECOMMENDATION¹

Pending before the court are two motions to dismiss the amended complaint and a second motion to amend the complaint. The first motion to dismiss is on behalf of defendants Dale R. Brungart, David Durst, PA Board of Probation & Parole, PA Department of Corrections, Records Officer and SCI Rockview. (Doc. No. [31](#)). The second motion to dismiss is on behalf of defendants Caryn Hamm, Bethanne Burkholder, Richard Goss, Marirosa Lamas, Tim Miller, Steven Morningstar, Brian Thompson and Parole Agent Norma McGinnis. (Doc. No. [57](#)). Also pending before the court is plaintiff Christopher Ireland's second motion to amend/ correct the complaint. (Doc.

¹ For the convenience of the reader of this document in electronic format, hyperlinks to the court's record and to authority cited have been inserted. No endorsement of any provider of electronic resources is intended by the court's practice of using hyperlinks.

No. [45](#)). For the reasons set forth below, the court will recommend that the Motions to Dismiss be **GRANTED** and the Motion to Amend the complaint be **DENIED**.

As an initial matter, before the court recommends disposition of the pending motions, there is one issue that needs to be addressed. That is service of process on defendant Board Agent Johnson. The summons was issued to him on July 18, 2011. On July 28, 2011, the summons was returned unexecuted, with a note on it that read “*Unable to Serve - Return Unexecuted Numerous “Johnsons” employed with Pa Probation and Parole - as Board Agents, Parole Officers, etc *Need first name of defendant Johnson to serve - see attached.” (Doc. No. [41](#) at 1). “Called PA Board of Probation - HR was unable to provide exact defendant - numerous “Johnson’s” employed with PA Probation and Parole Inmate need[s] to provide first name and address. (*Id.* at 2). As a result of the return of the unexecuted summons, on August 4, 2011, this court issued an order directing plaintiff to supply the court with the first name and address for defendant Board Agent Johnson by August 31, 2011, otherwise we would recommend dismissal of Board Agent Johnson from the action. (Doc. No. [43](#)). Plaintiff has not responded to this order, thus, as we warned in that order, we will recommend the dismissal of

Board Agent Johnson from the action.

I. BACKGROUND

A. Facts

For the purposes of the instant report and recommendation only, accepting as true all of the allegations in the amended complaint, (Doc. No. [28](#)), the facts are as follows. In 1993 Ireland was charged in Pennsylvania's Court of Common Pleas with several crimes, including rape by forcible compulsion, involuntary deviate sexual intercourse, terroristic threats, unlawful restraint, simple assault and corruption of a minor. Ireland proceeded to a jury trial where he presented the defense of consent and mistake as to age. Ireland was only found guilty of corruption of a minor, in violation of [18 Pa. C.S. §6301](#). At the time of the offense, the statute read:

Corruption of minors

(a) Offense defined.—Whoever, being of the age of 18 years and upwards, by any act corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of any crime, or who knowingly assists or encourages such minor in violating his or her parole or any order of court, is guilty of a misdemeanor of the first degree.

(b) Adjudication of delinquency unnecessary.—A conviction under the provisions of this section may be had whether or not the jurisdiction of any juvenile court has attached or shall thereafter attach to such minor or whether or not such minor has been

adjudicated a delinquent or shall thereafter be adjudicated a delinquent.

(c) Presumptions.—In trials and hearings upon charges of violating the provisions of this section, knowledge of the minor's age and of the court's orders and decrees concerning such minor shall be presumed in the absence of proof to the contrary.

(d) Mistake as to age.—

(1) Whenever in this section the criminality of conduct depends upon the corruption of a minor whose actual age is under 16 years, it is no defense that the actor did not know the age of the minor or reasonably believed the minor to be older than 18 years.

(2) Whenever in this section the criminality of conduct depends upon the corruption of a minor whose actual age is 16 years or more but less than 18 years, it is a defense for the actor to prove by a preponderance of the evidence that he reasonably believed the minor to be 18 years or older.

Ireland served a sentence for this conviction.

At some point after his release from prison for the 1993 corruption of a minor offense, Ireland was found in possession of a firearm. On January 14, 2009, Ireland was sentenced, again by the Pennsylvania Court of Common Pleas, to 2-4 years for possessing a firearm in violation of [18 Pa. C.S.A. §6105](#). Ireland is serving this sentence at SCI Rockview, a Pennsylvania state correctional institution.

According to Ireland, in 2009, he was interviewed by defendant David

Durst, a psychologist, to determine if Ireland would be required to attend the Sex Offenders Treatment Program (“SOTP”). Durst allegedly determined that SOTP was not required for Ireland, and Durst emailed counselor Jennifer Jackson and defendant parole agent Norma McGinnis and disclosed the substance of his discussion with Ireland. Ireland alleges that he did not give Durst permission to disclose any information learned from Durst’s discussions with Ireland. According to Ireland, both Jackson and McGinnis confirmed, in separate discussions with Ireland, that they each had received an email from Durst, and that Ireland would not be required to complete the SOTP.

As a result of the aforementioned discussions, defendants unit manager Tim Miller and records officer Dale Brungart² permitted Ireland to work in the prison’s forestry program.

Ireland applied for pre-release, which, according to the complaint, was granted with a pre-release date of January 4, 2010. Ireland was informed by “unit manager” (it is unclear from the complaint if this reference is to Tim Miller or some other unit manager) and defendant Steven Morningstar that Ireland was being held to see the Pennsylvania Board of Probation and Parole.

²Although the Records Officer and Dale R. Brungart are listed separately on the docket, they are apparently one and the same person. This is confirmed by Brungart’s brief, Doc. No. [35](#) at 7.

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