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UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK

JAMES PETTUS,

Plaintiff,

v.

9:08-CV-0883 (TJM)

ROSOTTI, Correctional Officer, Great Meadow Correctional Facility, *et al.*,

Defendants.

APPEARANCES:

JAMES PETTUS 03-R-3597 Great Meadow Correctional Facility Box 51 Comstock, NY 12821 Plaintiff, *pro se* 

THOMAS J. MCAVOY Senior United States District Judge

## **DECISION and ORDER**

Plaintiff James Pettus commenced this action by filing a *pro se* civil rights complaint. Dkt. No. 1. In his complaint, plaintiff alleged that defendant Rosotti had used excessive force on him. Plaintiff alleged that the event occurred on September 25, 2008. *Id.* However, this action was filed on August 18, 2008, over one month prior to the alleged event occurring. Accordingly, by Order of this Court filed on December 10, 2008, plaintiff was directed to submit an affidavit, sworn to under penalty of perjury, stating the date of the incident with defendant Rosotti that serves as the basis for this action.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> The Court is well aware of plaintiff's litigation history, and the fact that he presently has amassed far more than "three strikes." *Cf.* 9:06-CV-0152, Dkt. No. 24.

Because plaintiff had not submitted the required affidavit and the time to do so had expired, by Decision and Order filed on January 15, 2009, the Court warned plaintiff that if he failed to submit the required affidavit on or before January 31, 2009, this action would be dismissed, without prejudice. Plaintiff has wholly failed to comply with the prior Orders of this Court.

WHEREFORE, it is hereby

ORDERED, that this action is **dismissed** without prejudice, and it is further

ORDERED, that plaintiff's application to proceed in forma pauperis (Dkt. No. 2) is denied, and it is further

ORDERED, that the Clerk serve a copy of this Decision and Order on plaintiff. Dated:February 4, 2009

Thomas J. McKvoy
Senior, U.S. District Judge