

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID ROBINSON,

Plaintiff,

vs.

9:08-CV-0911

NEW YORK STATE DEPARTMENT OF
CORRECTION SERVICES, et al.,

Defendants.

Thomas J. McAvoy,
Sr. U.S. District Judge

DECISION & ORDER

This *pro se* civil rights action pursuant to 42 U.S.C. § 1983 was referred to the Hon. Gustave J. Di Bianco, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

The Report-Recommendation dated September 8, 2009 recommended that the Defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12 be granted. Plaintiff filed objections to the Report-Recommendation arguing only that he did not consent to have his complaint adjudicated by a Magistrate Judge, the Magistrate Judge misconstrued the facts in litigation and the law governing its conduct, and it was the fault of the United States Marshal's service that service was not properly effectuated.

When objections to a magistrate judge's Report-Recommendation

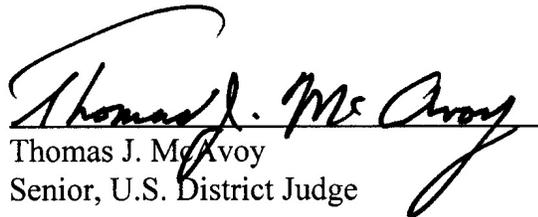
are lodged, the Court makes a "de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

Having reviewed the record *de novo* and having considered the issues raised in the Plaintiff's objections, this Court has determined to accept and adopt the recommendation of the Magistrate Judge for the reasons stated in the Report-Recommendation.

It is therefore **ORDERED** that Defendants' motion to dismiss is **GRANTED** and the Complaint is **DISMISSED IN ITS ENTIRETY**.

IT IS SO ORDERED.

Dated: September 30, 2009


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