

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MESSIAH JEFFERSON,

For Online Publication Only

Plaintiff,

ORDER
21-CV-2417 (JMA) (JMW)

-against-

**FILED
CLERK**

SHERIFF ERROL D. TOULON, et al.,

12:02 pm, Jan 18, 2023

Defendants.

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

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AZRACK, United States District Judge:

By way of Complaint dated April 26, 2021, Plaintiff Messiah Jefferson (“Plaintiff”), Steven Burton-Whitmore and Milo Tyler, all proceeding pro se, commenced this action against Defendants Sheriff Errol D. Toulon, Warden Franchi and multiple unnamed Suffolk County law enforcement officials, pursuant to 42 U.S.C § 1983. (ECF No. 1.) Burton-Whitmore’s and Tyler’s claims were dismissed by this Court on October 16, 2021, leaving Jefferson is the remaining Plaintiff. (See ECF No. 16 (dismissal order); ECF No. 29 (order denying reconsideration)).

In short, Plaintiff alleges that he was assessed “false disciplinary charges” while incarcerated at Yaphank Correctional Facility on January 16, 2021. (Id. at 6.) Plaintiff further claims that he was injured as a result of an alleged assault that arose from a strip search based on false allegations of possession and use of marijuana and alleges that the disciplinary process was circumvented resulting in due process violations under the 14th Amendment. (See generally Id.)

While Plaintiff appeared at a February 17, 2022, initial conference before Magistrate Judge James M. Wicks, and one subsequent status conference, he failed to appear at three consecutive status conferences or otherwise comply with additional court orders. (See, e.g., ECF Nos. 30, 38, 40-46.) By sua sponte Report and Recommendation dated December 22, 2022, Magistrate Judge James M. Wicks recommended dismissal of the action for failure to prosecute pursuant to Fed. R.

Civ. P. 41(b). (ECF No. 47.) No objections have been filed and the time for doing so has since passed. For the reasons stated below, the report is adopted in its entirety.

“Where parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” Smith v. Campbell, 782 F.3d 93, 102 (2d Cir. 2015) (quoting Mario v. P & C Food Mkts., Inc., 313 F.3d 758, 766 (2d Cir. 2002)); see also Phillips v. Long Island R.R. Co., 832 F. App’x 99, 100 (2d Cir. 2021) (same). In the absence of any objections, “the district court need only satisfy itself that there is no clear error on the face of the record.” Estate of Ellington ex rel. Ellington v. Harbrew Imports Ltd., 812 F. Supp. 2d 186, 189 (E.D.N.Y. 2011) (internal citations omitted).

The Court has reviewed the record and the unopposed Report and Recommendation for clear error and, finding none, hereby adopts Judge Wicks’s Report and Recommendation in its entirety as the opinion of the Court.

Accordingly, the Court dismisses the action with prejudice for failure to prosecute under Rule 41(b) of the Federal Rules of Civil Procedure. The Clerk of Court is directed to mail a copy of this Order to Plaintiff at the address of record and close this case.

SO ORDERED.

Dated: January 18, 2023
Central Islip, New York

/s/ (JMA)
JOAN M. AZRACK
UNITED STATES DISTRICT JUDGE