

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MICHAEL NICHOLAS,

Plaintiff,

v.

Could

1:15-CV-0402
(GTS/CFH)

CITY OF SCHENECTADY;
CITY OF SCHENECTADY POLICE DEP'T;
POLICE SERGEANT LUCIANO SAVOIA;
POLICE OFFICER MICHAEL HUDSON;
POLICE OFFICER CRAIG CROMLEY;
POLICE OFFICER MICHAEL CROUNSE;
POLICE OFFICE CHRIS SEMIONE; and
UNITED STATES MARSHAL AL DWYER,

Defendants.

APPEARANCES:

MICHAEL NICHOLAS

Plaintiff, *Pro Se*

202 Winnikee Avenue

Poughkeepsie, New York 12601

GLENN T. SUDDABY, United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by Michael Nicholas (“Plaintiff”) against the eight above-captioned entities and individuals (“Defendants”) arising from a stop, search and arrest of Plaintiff in Schenectady, New York on April 9, 2012, is United States Magistrate Christian F. Hummel’s Report-Recommendation recommending that certain of the claims in Plaintiff’s Complaint be dismissed with prejudice (and without leave to amend), certain of the claims be dismissed without prejudice (and with leave to amend), and certain of the claims survive the Court’s initial review of his Complaint. (Dkt. No. 4.) Plaintiff has not

filed an objection to the Report-Recommendation and the deadline in which to do so has expired. (See generally Docket Sheet.)

When *no* objection is filed to a report-recommendation, the Court subjects that report-recommendation to only a *clear error* review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a “clear error” review, “the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Id.*: see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1. (S.D.N.Y. July 31, 1995) (Sotomayor, J.) (“I am permitted to adopt those sections of [a magistrate judge’s] report to which no specific objection is made, so long as those sections are not facially erroneous.”) (internal quotation marks and citations omitted).

Here, after carefully considering the matter, the Court can find no clear error with Magistrate Judge Hummel’s Report-Recommendation. (Dkt. No. 4.) Magistrate Judge Hummel employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. (*Id.*) As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons stated therein.

The Court would add only one point. Plaintiff is advised that any Amended Complaint he chooses to file must comply with Local Rule 7.1(a)(4) of the Local Rules of Practice for the Northern District of New York, a courtesy copy of which was previously mailed to Plaintiff (along with the District’s *Pro Se* Handbook) on April 3, 2015. (Dkt. No. 3.) Plaintiff is further advised that, should he chose to file an Amended Complaint, that Amended Complaint must reassert any claims not dismissed from his original Complaint (if he wishes to continue to pursue those claims), because an Amended Complaint must be *complete* pleading, which supersedes the original Complaint and may not incorporate any portion of the original Complaint by reference.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Hummel's Report-Recommendation (Dkt. No. 4) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that the following claims are **DISMISSED** with prejudice and without leave to amend:

- (1) Plaintiff's claims against Defendants Savoia, Hudson, Crouse, Semione, and Comley in their official capacities; and
- (2) Plaintiff's Eighth Amendment claims; and it is further

ORDERED that the following claims **SHALL BE DISMISSED** with prejudice and without further order of this Court **UNLESS**, within **THIRTY (30) DAYS** of the date of this Decision and Order, Plaintiff submits an **Amended Complaint** that corrects the pleading defects contained in those claims (in accordance with Magistrate Judge Hummel's Report-Recommendation):

- (1) Plaintiff's Fourteenth Amendment claims; and
- (2) Plaintiff's malicious prosecution claim; and it is further

ORDERED that the following claims **SURVIVE** the Court's initial review of Plaintiff's Complaint:

- (1) Plaintiff's Fourth Amendment claims against Defendants Savoia, Hudson, Crouse, Semione, Comley, and Dwyer in the individual capacities;
- (2) Plaintiff's Fifth Amendment claims against Defendants Savoia, Hudson, Crouse, Semione, Comley, and Dwyer in their individual capacities; and
- (3) Plaintiff's remaining claims against Defendants City of Schenectady and the

Schenectady Police Department; and it is further

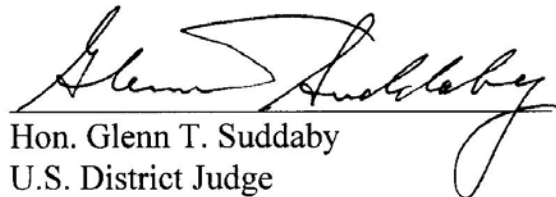
ORDERED that any Amended Complaint Plaintiff submits shall be a complete pleading, which will supersede the original Complaint, and may not incorporate any portion of the original Complaint by reference, in accordance with Local Rule 7.1(a)(4) of the Local Rules of Practice for this District; and it is further

ORDERED that the Clerk of the Court shall issue Summonses for Defendants and forward them, along with copies of the original Complaint and General Order 25, to the United States Marshal for service upon Defendants; and it is further

ORDERED that Defendants or their counsel shall provide a formal response to the Complaint, in accordance with the Federal Rules of Civil Procedure, as it relates to the claims against them; and it is further

ORDERED that the Clerk serve a copy of this Decision and Order upon Plaintiff by regular mail.

Dated: June 25, 2015
Syracuse, New York


Hon. Glenn T. Suddaby
U.S. District Judge