

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANDRE CANTEY,

Plaintiff,

v.

1:16-CV-0014
(GTS/CFH)

COUNTY OF ALBANY; CITY OF ALBANY;
CITY OF ALBANY POLICE DEPARTMENT;
JOSE MARTINEZ, Police Officer, City of Albany;
and BEN BURNHAM, Police Officer, City of Albany,

Defendants.

APPEARANCES:

ANDRE CANTEY, 14-A-4643
Plaintiff, *Pro Se*
Coxsackie Correctional Facility
P.O. Box 999
Coxsackie, New York 12051

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by Andre Cantey (“Plaintiff”) against the five above-captioned entities and individuals (“Defendants”) arising from his arrest and imprisonment in June of 2014 in the City of Albany, is United States Magistrate Judge Christian F. Hummel’s Report-Recommendation recommending that certain of Plaintiff’s claims in his Complaint be dismissed with prejudice, that certain of his claims be dismissed without prejudice, and that his false arrest and false imprisonment claims against Defendants Martinez and Burnham in their individual capacities be permitted to proceed. (Dkt. No. 4.) Plaintiff has not filed an objection to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.) For the reasons set forth below, the Report-Recommendation is adopted in its entirety.

When, as here, *no* objection is made 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).

Based upon a careful review of the record in this matter, the Court can find no clear error in the Report-Recommendation: Magistrate Judge Hummel employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Court accepts and adopts the Report-Recommendation for the reasons stated therein. (Dkt. No. 4.) To those reasons, the Court adds only one point.

Magistrate Judge Hummel’s Report-Recommendation does not expressly contain a recommendation regarding Plaintiff’s claims against the County of Albany. (Dkt. No. 4.) This is certainly understandable, given the rambling construction of the Complaint and the absence of a reference to the County in its “Parties” section. (Dkt. No. 1.) However, when construed with special liberality, the Complaint certainly attempts to assert claims against the County, referring to the County in the caption, as well as in Paragraphs “5,” “7” and “8.1.” (*Id.*) The problem with the Complaint is that it fails to allege facts plausibly suggesting that the County had an official policy, custom or practice, and that Defendants Martinez and Burnham (who were officers of the *City* Police Department) were acting in response to that policy, custom or practice. (*Id.*) For these reasons, Plaintiff’s claims against the County of Albany are dismissed without prejudice.

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 in Plaintiff's Complaint (Dkt. No. 1) are **DISMISSED** with prejudice:

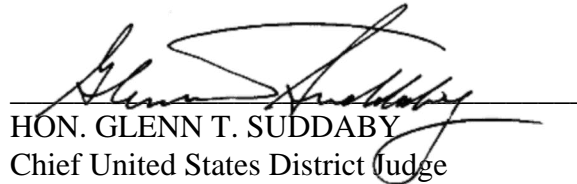
- (1) Plaintiff's official-capacity claims against Defendants Martinez and Burnham;
- (2) Plaintiff's slander and libel claims under New York State law against Defendants Martinez and Burnham in their individual capacities;
- (3) Plaintiff's threat-of-force claim under the Fourth and/or Fourteenth Amendments against Defendants Martinez and Burnham in their individual capacities; and it is further

ORDERED that the following claims in Plaintiff's Complaint (Dkt. No. 1) are **DISMISSED** without prejudice to refiling in this action in accordance with Fed. R. Civ. P. 15 and this Decision and Order:

- (1) Plaintiff's claims against the County of Albany, City of Albany and City of Albany Police Department;
- (2) Plaintiff's claim under the Fifth Amendment against all Defendants;
- (3) Plaintiff's malicious prosecution and abuse of process claims under the Fourteenth Amendment and/or New York State law against Defendants Martinez and Burnham in their individual capacities;
- (4) Plaintiff's claim under the Fourteenth Amendment against all Defendants;
- (5) Plaintiff's fraud claim under New York State law against Defendants Martinez and Burnham in their individual capacities;

ORDERED that the following claims in Plaintiff's Complaint (Dkt. No. 1) may proceed: his false arrest and false imprisonment claims under the Fourth Amendment against Defendants Martinez and Burnham in their individual capacities. The Clerk's office is directed to issue summonses for Defendants Martinez and Burnham and forward to the U.S. Marshal for service. The Clerk's office is directed to terminate Defendants County of Albany, City of Albany and Albany Police Department.

Dated: February 22, 2016
Syracuse, New York


HON. GLENN T. SUDDABY
Chief United States District Judge