

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOSUE ANTONIO GONAZALEZ

Plaintiff,

v.

1:23-CV-1198
(GTS/CFH)

CITY OF KINGSTON; JUDGE KIRSCHNER, Kingston City Court Judge, in His Official and Individual Capacity; DAVID J. CLEGG, Ulster county District Atty., in His Official and Individual Capacity; JAMES R. FARRELL, Ulster County Court Judge, in His Official and Individual Capacity; JUDGE GILPATRICK, Supreme Court Judge, in His Official and Individual Capacity, and ULSTER COUNTY,

Defendants.

APPEARANCES:

OF COUNSEL:

JOSUE ANTONIO GONZALEZ

Plaintiff, *Pro Se*

431 Lawrie Street

Perth Amboy, New Jersey 08861

GLENN T. SUDDABY, United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by Josue Antonio Gonzalez (“Plaintiff”) against Ulster County, the City of Kingston, and the four above-captioned individuals (“Defendants”), is United States Magistrate Judge Christian F. Hummel’s Report-Recommendation recommending that Plaintiff’s claims against Defendants Clegg, Gilpatrick, Kirschner, and Farrell be dismissed with prejudice, and that Plaintiff’s claims against Defendants County of Ulster and City of Kingston be dismissed without prejudice. (Dkt. No. 6.) Plaintiff

has not filed an Objection to the Report-Recommendation, and the time in which to do so has expired. (*See generally*, Docket Sheet.)

After carefully reviewing the relevant papers herein, including Magistrate Judge Hummel’s thorough Report-Recommendation, the Court can find no clear error in the Report-Recommendation:¹ Magistrate Judge Hummel employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons stated therein.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Hummel’s Report-Recommendation (Dkt. No. 6) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Plaintiff’s claims against Defendants Clegg, Gilpatrick, Kirschner, and Farrell are **DISMISSED with prejudice**; and it is further

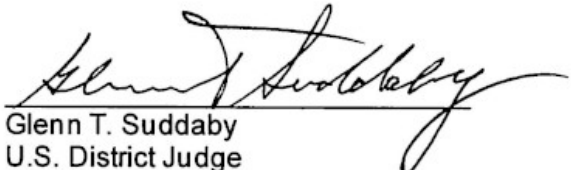
ORDERED that the remaining claims in Plaintiff’s Complaint (Dkt. No. 1) – i.e., his claims against Defendants City of Kingston and Ulster County – **shall be DISMISSED with prejudice** and without further Order of this Court **UNLESS**, within **THIRTY (30) DAYS** of entry of this Decision and Order, Plaintiff files an **AMENDED COMPLAINT** that cures the pleading defects identified in the Report-Recommendation; and it is further

¹ When 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 omitted).

ORDERED that, should Plaintiff wish to file an Amended Complaint in this matter, the Amended Complaint must be a complete pleading which will supercede and replace his original Complaint in all respects, and not reassert any claims that have been dismissed with prejudice; and it is further

ORDERED that, should Plaintiff file a timely Amended Complaint, the Amended Complaint be returned to Magistrate Judge Hummel for further review pursuant to 28 U.S.C. § 1915.

Dated: June 4, 2024
Syracuse, New York


Glenn T. Suddaby
U.S. District Judge