

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DARRYL WRIGHT,

Plaintiff,

3:14-CV-0047
(GTS/DEP)

v.

MARTIN E. SMITH, Broome Cnty. Court Judge;
TORRANCE L. SCHMITZ, Attorney at Law;
STEPHANIE M. MILKS, Assis. Dist. Attorney;
CATHERINE A. ANDREWS, Sr. Court Reporter;
CLARE E. WILLIAMS, Transcriber/Typist;
VINCENT ACCARDI, Attorney at Law; and
SALVATORE M. LATONA, Attorney at Law,

Defendants.

APPEARANCES:

OF COUNSEL:

DARRYL WRIGHT, 14-B-0271
Plaintiff, *Pro Se*
Auburn Correctional Facility
P.O. Box 618
Auburn, New York 13024

GLENN T. SUDDABY, United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* prisoner civil rights action filed by Darryl Wright (“Plaintiff”) against the seven above-captioned individuals (“Defendants”), are United States Magistrate Judge David E. Peebles’ Report-Recommendation recommending that Plaintiff’s complaint be dismissed in its entirety, and Plaintiff’s Objection to the Report-Recommendation. (Dkt. Nos. 8, 10.) After carefully reviewing the relevant filings in this action, the Court can find no error in the Report-Recommendation, clear or otherwise: Magistrate Judge Peebles 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. 8.)

The Court would add only that Plaintiff's argument in his Objection (i.e., that he cannot exhaust a claim challenging the sufficiency of the evidence before a grand jury) is immaterial given the threshold reasons for Magistrate Judge Peebles' recommendation of dismissal: (1) that the proper remedy for any claim that may alter the fact or duration of plaintiff's incarceration is not by way of a civil rights complaint pursuant to 42 U.S.C. § 1983, but by way of a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254; and (2) Plaintiff has not demonstrated that a judgment against him has been entered in connection with the underlying criminal conviction. The Court emphasizes that, to the extent that Plaintiff's seeks to assert a claim under 28 U.S.C. § 2254, he may do so after he pursues any procedural options available to him in New York State court, and then takes whatever steps may be appropriate to return to federal court.

Diguglielmo v. Senkowski, 42 F. App'x 492, 496 (2d Cir. 2002).

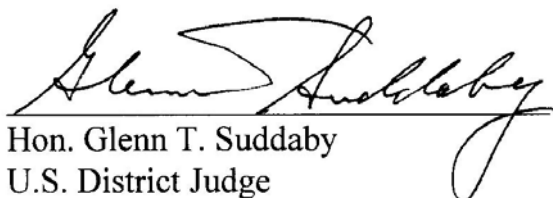
ACCORDINGLY, it is

ORDERED that Magistrate Judge Peebles' Report-Recommendation (Dkt. No. 8) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Plaintiff's letter motion for the appointment of counsel and for a preliminary injunction (Dkt. No. 4 and 5) is **DENIED as moot**; and it is further

ORDERED that Plaintiff's Complaint (Dkt. No. 1) is **DISMISSED with prejudice** to the extent it asserts a claim under 42 U.S.C. § 1983, and **without prejudice** to the extent that it seeks to assert a claim under 28 U.S.C. § 2254.

Dated: June 5, 2014
Syracuse, New York


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