

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SHANE T. STOKES SR.,

Plaintiff,

vs.

5:18-CV-113
(TJM-ATB)

DENISE M. KREIDLER, Individually and in
Her Official Capacity,

Defendant.

Thomas J. McAvoy,
United States District Judge

DECISION & ORDER

This action, brought pursuant to 42 U.S.C. § 1983, alleges that Defendant, an official court reporter, violated Plaintiff's due process rights by altering trial transcripts. The Court referred the case to the Hon. Andrew T. Baxter, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

Magistrate Judge Baxter's Report-Recommendation, dated January 30, 2018, gave Plaintiff's Complaint the official review required of actions brought *in forma pauperis*. Magistrate Judge Baxter concluded that Plaintiff's Complaint violated the rule stated in Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). If Plaintiff were to prevail on his claims

in this matter he would necessarily call into question his prosecution in the underlying criminal matter. Magistrate Judge Baxter therefore recommended that Plaintiff's claims be dismissed without prejudice to refiling should the Heck bar be lifted. Judge Baxter also recommended that all claims brought against Defendant in her official capacity be dismissed with prejudice.

Plaintiff filed timely objections to the Report-Recommendation. Plaintiff agreed that his claim was not cognizable due to Heck and suggested that voluntary dismissal was appropriate. When objections to a magistrate judge's Report-Recommendation are lodged, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

Having reviewed the record *de novo* and having considered the issues raised in the Plaintiffs' objections, this Court has determined to accept and adopt the recommendation of Magistrate Judge Baxter for the reasons stated in the Report-Recommendation. The Court acknowledges that Plaintiff has agreed to "voluntarily dismiss" or discontinue the Complaint. The Court finds, however, that accepting the Report-Recommendation would be the most efficient means of recognizing that the Complaint fails to state a claim upon which relief can be granted while achieving the Plaintiff's aim of discontinuing the case until such time as the Heck bar is no longer in place.

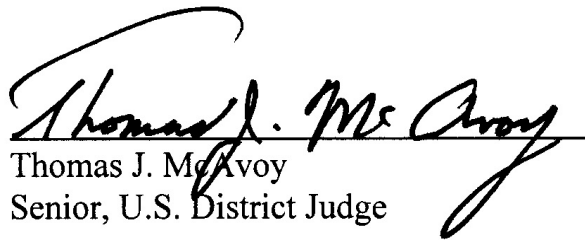
It is therefore **ORDERED** that Plaintiff's objections to the Report-Recommendation

of Magistrate Judge Baxter, dkt. # 5, are hereby OVERRULED. The Report-
Recommendation, dkt. # 4, is hereby ACCEPTED, and:

1. The Complaint is hereby **DISMISSED WITH PREJUDICE** as to any claims brought against Defendant in her official capacity; and
2. The remaining claims in the Complaint are **DISMISSED WITHOUT PREJUDICE** subject to the lifting of the Heck bar.

IT IS SO ORDERED.

Dated: March 8, 2018


Thomas J. McAvoy
Senior, U.S. District Judge