

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MARSHEEM JOHNSON,

Plaintiff,

5:20-CV-1124
(GTS/ML)

v.

D. BIELING, Onondaga County Sheriff 's Officer;
S. MOLLICA, Onondaga County Sheriff 's Officer;
J.M. YOUNG, Sgt.; AUGUST NORDON, Public
Defender; BURNETTII, Onondaga County Supreme
Court Judge; CELIE, Onondaga County Drug Court
Judge; and CLIFTON CARDAN, Public Defender,

Defendants.

APPEARANCES:

MARSHEEM JOHNSON, 17-B-2753
Plaintiff, *Pro Se*
Collins Correctional Facility
P.O. Box 340
Collins, New York 14034

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by Marsheem Johnson (“Plaintiff”) against the seven above-captioned individuals (“Defendants”), is United States Magistrate Judge Miroslav Lovric’s Report-Recommendation recommending that certain of Plaintiff’s claims be dismissed with prejudice and that the remainder of those claims be dismissed without prejudice and with leave to replead. (Dkt. No. 8.) Plaintiff has not filed an objection to the Report-Recommendation, and the deadline by which to do so has expired. (*See*

generally Docket Sheet.)

After carefully reviewing the relevant papers herein, including Magistrate Judge Lovric's thorough Report-Recommendation, the Court can find no clear-error in the Report-Recommendation.¹ Magistrate Judge Lovric has 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 set forth therein.²

ACCORDINGLY, it is

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

ORDERED that the following claims asserted in Plaintiff's Complaint (Dkt. No. 1) are **DISMISSED** with prejudice and without leave to replead:

- (1) Plaintiff's claims against Defendant Burnettii;
- (2) Plaintiff's claims against Defendant Celie;
- (3) Plaintiff's claims against Defendant Nordon;

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).

² The Court notes that on page 19 of the Report-Recommendation, in the last sentence of Part V.A.1.b.iv., the term "excessive force claims" is used instead of the term "unlawful search and seizure claims." (Dkt. No. 8, at 19.) The Court construes that usage as a mere typographical error, given the fact that the section regards Plaintiff's unlawful search and seizure claims (and the fact that the Report-Recommendation previously analyzed Plaintiff's excessive force claims).


(4) Plaintiff's claims against Defendant Cardan; and

(5) Plaintiff's claims against Defendants Bieling, Mollica and Young in their official capacities; and it is further

ORDERED that the remaining claims asserted in Plaintiff's Complaint (Dkt. No. 1)—i.e., Plaintiff's claims against Defendants Bieling, Mollica and Young in their individual capacities for violation of the Due Process Clause, violation of the Equal Protection Clause, false arrest, excessive force, failure to intervene, unlawful search and seizure, and malicious prosecution—**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 files an **Amended Complaint** that cures the pleading defects identified in the Report-Recommendation; and it is further

ORDERED that, should Plaintiff file a timely Amended Complaint, it shall be referred to Magistrate Judge Lovric for his review.

Dated: May 7, 2021
Syracuse, New York


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