

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SCOTT MYERS,

Plaintiff,

-v-

No. 6:15-CV-0553
(DNH/ATB)

CHARLES BUCCA, GREG SEELEY,
PATROLMAN ROWELL, ALAN FRISBEE,
DONNA BAECKMANN, MICHAEL SPITZ,
TERRY WILHELM AND BOBBY HAINES

Defendants.

APPEARANCES:

OF COUNSEL:

SCOTT MYERS
Plaintiff pro se
Mid-State Correctional Facility
P.O. Box 2500
Marcy, NY 13403

HON. ERIC T. SCHNEIDERMAN
Attorney General for the State of New York
Attorney for Defendants
The Capitol
Albany, NY 12224

RACHEL M. KISH, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff Scott Myers brought this civil rights action pursuant to 42 U.S.C. § 1983. On May 14, 2015, the Honorable Andrew T. Baxter, United States Magistrate Judge, advised by Report-Recommendation that plaintiff's complaint be dismissed sua sponte pursuant to 28 U.S.C. §§ 1915A and 1915(e) as to all but one claim against only one defendant. Plaintiff timely filed objections to the Report-Recommendation (ECF No. 6) and has already submitted a proposed amended complaint (ECF No. 9).

Based upon a careful review of the entire file and the recommendations of the Magistrate Judge, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

Therefore, it is

ORDERED that:

1. Plaintiff's complaint is **DISMISSED** with prejudice as against defendants Bucca, Wilhelm, Frisbee and Baeckmann, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i-iii);

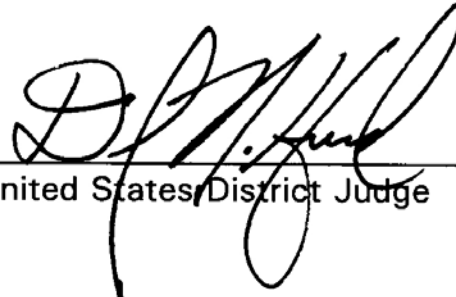
2. Plaintiff's complaint is **DISMISSED** without prejudice as against defendants Seeley, Spitz and Haines pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii);

3. Any claims against defendant Rowell, relating to his testimony at trial and for false arrest are **DISMISSED** with prejudice, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii-iii);

4. Plaintiff's proposed amended complaint (ECF No. 9) shall be reviewed by the Honorable Andrew T. Baxter to determine its compliance with the Report-Recommendation and 28 U.S.C. §§ 1915A and 1915(e); and

5. The Clerk is directed to serve a copy of this Decision and Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.


United States District Judge

Dated: November 10, 2015
Utica, New York