

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ARTHUR BJ BENTLEY,

Plaintiff,

v.

6:17-cv-444

(TJM/ATB)

SCOTT McNAMARA, District Attorney, et al.,

Defendants.

Thomas J. McAvoy, Sr. U.S.D.J.

DECISION and ORDER

The Court referred this action, brought pursuant to 42 U.S.C. § 1983, to the Hon. Andrew T. Baxter, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Rule 72.3(d) of the Local Rules of the Northern District of New York. Plaintiff alleges that Defendants violated his constitutional rights when they arrested and prosecuted him without probable cause.

Magistrate Judge Baxter gave the Complaint, filed *pro se* and *in forma pauperis*, an initial review pursuant to 28 U.S.C. § 1915. Magistrate Judge Baxter recommended that the claim be dismissed in its entirety and with prejudice as to some parties and without prejudice as to others.

Neither side filed objections to the Report-Recommendation and the time for filing such objections has passed. After examining the record, this Court has determined that

the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will adopt the Report-Recommendation.


Accordingly:

The Report-Recommendation, dkt. # 4, is hereby ADOPTED. Plaintiff's Complaint is dismissed in its entirety as follows:

1. The Complaint is DISMISSED WITH PREJUDICE with respect to ADA Yoxall and DA McNamara based on absolute immunity and failure to state a claim; and
2. The Complaint is DISMISSED WITHOUT PREJUDICE as to Defendant Sweezey for failure to state a claim pursuant to Heck v. Humprey.

The Court CERTIFIES pursuant to 28 U.S.C. § 1915(a)(3) that any appeal taken from this order would not be taken in good faith.

IT IS SO ORDERED.


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

Dated: July 6, 2017