

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

NICHOLAS DAYTER,

Plaintiff,

vs.

**6:19-CV-477
(TJM/TWD)**

DAVID CAPUTO, et al.,

Defendants.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

The Court referred this *pro se* civil action, brought pursuant to 42 U.S.C. § 1983, to Magistrate Judge Thérèse Wiley Dancks for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Plaintiff alleges that the Defendants, police officers, detectives, and a state-court judge, violated his rights when he was arrested, searched, tried, and convicted him.

Magistrate Judge Dancks's Report-Recommendation, dkt. # 5, issued on June 4, 2019, provided Plaintiff's Complaint, filed *pro se* along with a motion to proceed *in forma pauperis*, an initial review pursuant to 28 U.S.C. §§ 1915(e) and 1915A. Magistrate Judge Dancks recommends that the Court permit Plaintiff's excessive force and failure-to-protect claims against Defendants David Caputo and Craig Sleurs be permitted to proceed, and that the remainder of Plaintiff's claims be dismissed, some with prejudice and some with

leave to plead again.. Magistrate Judge Dancks further recommends that Plaintiff be permitted to file an Amended Complaint.

No party objected to the Report-Recommendation, and the time for 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 accept and adopt the Report-Recommendation for the reasons stated therein.

Accordingly,

The Report-Recommendation of Magistrate Judge Dancks, dkt. # 5, is hereby **ACCEPTED** and **ADOPTED**. The Court hereby **ORDERS** that:

1. The Clerk of Court is hereby **DIRECTED** to provide the Superintendent of the facility that Plaintiff has designated as his current location with a copy of Plaintiff's inmate authorization form (dkt. # 3), and notify that official that Plaintiff has filed this action and is required to pay the Northern District of New York the entire statutory filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915;
2. Plaintiff's Complaint is hereby **ACCEPTED FOR FILING** with respect to Plaintiff's claims for excessive force and failure-to-intervene against Defendants Caputo and Sleurs only;
3. Plaintiff's claims against Defendant Judge Donovan are hereby **DISMISSED WITH PREJUDICE**;
4. Plaintiff's claims against Defendant Bethlehem Police Department are hereby **DISMISSED WITH PREJUDICE**;
5. Plaintiff's claims against Defendants Caputo and Sleurs are hereby

DISMISSED WITHOUT PREJUDICE TO REPLEADING;

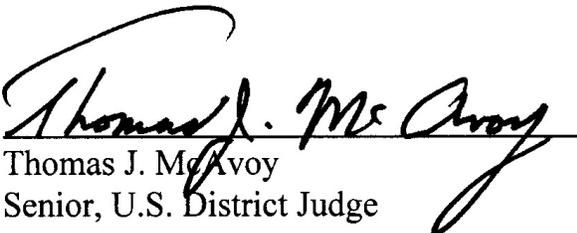
6. Plaintiff's illegal search and seizure claim against Defendant Cross is hereby DISMISSED WITHOUT PREJUDICE TO REPLEADING;

7. Plaintiff's claims for false arrest, false imprisonment, malicious prosecution, defamation, slander, and violation of due process are DISMISSED WITHOUT PREJUDICE as barred by Heck v. Humphrey, 512 U.S. 477 (1994). Plaintiff may raise such claims only after an action that removes the Heck bar; and

8. Should plaintiff choose to file an Amended Complaint, that Amended Complaint should be consistent with Magistrate Judge Dancks' recommendations and filed within 30 days of the date of this order. Plaintiff is advised that an amended complaint supersedes in all respects the prior pleading. Therefore, if plaintiff files an amended complaint, he **must properly allege in the amended complaint all factual bases for all claims asserted therein, and the amended complaint must be in compliance with Rules 8 and 10 of the Federal Rules of Civil Procedure.**

IT IS SO ORDERED.

Dated: July 10, 2019


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