

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MONTELL EMERSON,

Plaintiff,

-v-

9:08-CV-824 (NAM/ATB)

**NEW YORK STATE DEPARTMENT OF
CORRECTIONAL SERVICES, ET AL.,**

Defendants.

APPEARANCES:

Montell Emerson
06-A-2900
Wende Correctional Facility
P.O. Box 1187
Alden, New York 14004
Plaintiff, *pro se*

HON. ERIC T. SCHNEIDERMAN, Attorney General for the State of New York
CHARLES J. QUACKENBUSH, Esq., Assistant Attorney General
The Capitol
Albany, New York 12224
Attorney for Defendants

Hon. Norman A. Mordue, Chief U.S. District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff, an inmate in the custody of the New York State Department of Corrections and Community Services (“DOCCS”), brought this action under 42 U.S.C. § 1983 for monetary and declaratory relief. In his amended complaint (Dkt. No. 85), plaintiff alleges that defendants denied him constitutionally adequate medical care while he was in the custody of the Walsh Regional Medical Unit in the Mohawk Correctional Facility. Plaintiff also alleges that DOCCS failed to accommodate his disabilities to enable him to participate in outdoor exercise, in violation

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of the Americans with Disabilities Act and section 504 of the Rehabilitation Act, and that DOCCS employees initiated unfounded disciplinary charges against him in retaliation for his filing of this lawsuit, in violation of his rights under the First Amendment.

Defendants moved (Dkt. No. 107) for summary judgment dismissing the remaining claims in this action. Upon referral pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.3(c), United States Magistrate Judge Andrew T. Baxter issued a thorough Report and Recommendation (Dkt. No. 141) reviewing this voluminous record and the applicable law. Magistrate Judge Baxter recommends that the motion be granted and the amended complaint dismissed.

Neither party has objected. The Court has reviewed Magistrate Judge Baxter's Report and Recommendation and approves it in all respects. The recent Second Circuit ruling in *Phelan v. Thomas*, 2011 WL 4470023 (2d Cir. Sept. 28, 2011), decided after the Report and Recommendation was issued, does not alter the Court's conclusion.

It is therefore

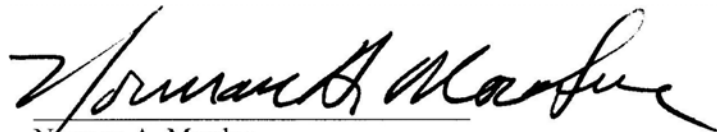
ORDERED that United States Magistrate Judge Andrew T. Baxter's Report and Recommendation (Dkt. No. 141) is accepted; and it is further

ORDERED that defendants' motion for summary judgment (Dkt. No. 107) is granted and the action is dismissed; and it is further

ORDERED that the Clerk serve copies of this Memorandum-Decision and Order in accordance with the Local Rules of the Northern District of New York.

IT IS SO ORDERED.

September 30, 2011



Norman A. Mordue
Chief United States District Court Judge

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