

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LAWRENCE J. WALTER,

Plaintiff,

-v-

9:08-CV-908 (NAM/DRH)

**BRIAN FISCHER, Commissioner, Department of
Correctional Services; JOHN H. NUTALL, Deputy
Commissioner for Program Services; DWIGHT
BRADFORD, Director of Substance Abuse; and S.
SPURGEON, Senior Corrections Counselor,**

Defendants.

APPEARANCES:

LAWRENCE J. WALTER
01-B-2188
Mid-State Correctional Facility
Post Office Box 2500
Marcy, New York 13403
Plaintiff, *Pro Se*

HON. ANDREW M. CUOMO, Attorney General for the State of New York
MICHAEL G. McCARTIN, Esq., Assistant Attorney General
The Capitol
Albany, New York 12224-0341
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 Correctional Services (“DOCS”), brought this action under 42 U.S.C. § 1983. Defendants move (Dkt. No. 19) to dismiss the action in its entirety. Plaintiff moves (Dkt. No. 24) for a preliminary injunction and temporary restraining order.

Pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.3(c), the Court referred

defendants' dismissal motion to United States Magistrate Judge David R. Homer. Magistrate Judge Homer has issued a Report and Recommendation (Dkt. No. 28) recommending that defendants' motion to dismiss be granted and that the complaint be dismissed in its entirety as to all claims and all defendants. Plaintiff has submitted an objection (Dkt. No. 31). In view of plaintiff's objections, pursuant to 28 U.S.C. § 636(b)(1)(C), this Court conducts a *de novo* review of the entire matter.

Upon *de novo* review, the Court adopts and accepts Magistrate Judge Homer's Report and Recommendation in all respects. The complaint is dismissed under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted. In light of this determination, plaintiff's motion for a preliminary injunction and temporary restraining order is denied. In addition, Magistrate Judge Homer properly denied plaintiff's request (Dkt. No. 25) for *in forma pauperis* status.

It is therefore

ORDERED that the Report and Recommendation of United States Magistrate Judge David R. Homer (Dkt. No. 28) is adopted and accepted in all respects; and it is further

ORDERED that defendants' motion (Dkt. No. 19) is granted, and the complaint is dismissed on the merits under Fed. R. Civ. P. 12(b)(6); and it is further

ORDERED that plaintiff's motion (Dkt. No. 24) for a preliminary injunction and temporary restraining order is denied.

IT IS SO ORDERED.

September 28, 2009
Syracuse, New York


Norman A. Mordue
Chief United States District Court Judge