

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DOUGLAS R. MCCARROLL,

Plaintiff,

-v-

9:09-CV-355 (NAM/TWD)

Y. MATTEAU,

Defendant.

APPEARANCES:

DOUGLAS R. MCCARROLL
c/o Law Offices of Bruce Corrigan, Jr.
1853 Post Road East
Westport, Connecticut 06880
Plaintiff *pro se*

HON. RICHARD S. HARTUNIAN, United States Attorney
CHARLES E. ROBERTS, Esq., Assistant United States Attorney
100 South Clinton Street
Syracuse, New York 13261-7198
Counsel for Defendant

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

MEMORANDUM-DECISION AND ORDER

Plaintiff brought this *pro se* action for money damages pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). Plaintiff claims that, while he was an inmate at the Federal Correctional Institution in Ray Brook, defendant, a guard at the facility, subjected him to sexual assault and harassment motivated in part by plaintiff's status as a "pro se litigant [who] helps other prisoners with their legal work." Defendant moved (Dkt. No. 31) for summary judgment dismissing the action. Upon referral pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.3(c), United States Magistrate Judge Thérèse Wiley Dancks

issued an excellent Report-Recommendation and Order (Dkt. No. 40) recommending that defendant's motion be granted in part and denied in part. Specifically, Magistrate Judge Dancks recommends that summary judgment be granted dismissing the following claims: (1) plaintiff's retaliation claim regarding the alleged cell searches; (2) plaintiff's retaliation claim regarding defendant's alleged comments and gestures; (3) plaintiff's Fourth Amendment claim regarding the alleged cell searches; (4) plaintiff's equal protection claim; and (5) plaintiff's intentional infliction of emotional distress claim. She further recommends that summary judgment be denied as to the following claims: (1) plaintiff's retaliation claim regarding the alleged sexual touching incidents; (2) plaintiff's retaliation claim regarding the February 28, 2008 misbehavior report; (3) plaintiff's Fourth Amendment claim regarding the alleged sexual touching incidents; and (4) plaintiff's negligent infliction of emotional distress claim.

Defendant submits an objection (Dkt. No. 45) to the Report-Recommendation and Order and argues that the complaint should be dismissed in its entirety. Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court reviews *de novo* those parts of the Report and Recommendation to which defendant specifically objects.

Magistrate Judge Dancks sets forth a detailed factual summary, which this Court adopts. Defendant raises some strong arguments, particularly regarding the Fourth Amendment and negligent infliction of emotional distress claims, and the Court agrees with Magistrate Judge Dancks that it is a "close" case. On thorough review of the record and applicable law, the Court agrees with Magistrate Judge Dancks's analysis and recommendations. Thus, upon *de novo* review, the Court accepts and adopts the Report-Recommendation and Order

It is therefore

ORDERED that the Report-Recommendation and Order (Dkt. No. 40) of United States Magistrate Judge Thérèse Wiley Dancks is accepted and adopted; and it is further

ORDERED that defendant's motion (Dkt. No. 31) for summary judgment is granted in part and denied in part as set forth in the Report-Recommendation and Order; and it is further

ORDERED that the Clerk of the Court is directed to 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 25, 2012
Syracuse, New York



Honorable Norman A. Mordue
U.S. District Judge