DAVID N. HURD

United States District Judge

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK	
DAVID R. RODRIGUEZ,	
Plaintiff,	
-V-	No. 10-CV-196
MR. SWEENY, Sergeant, Barehill Correctional Facility; MR. WALKER, Sergeant, Barehill Correctional Facility; MR. BELLROSE, C.O., Barehill Correctional Facility; and MR. RADNODE, C.O., Barehill Correctional Facility,	
Defendants.	
APPEARANCES:	OF COUNSEL:
DAVID R. RODRIGUEZ Plaintiff Pro Se 07-A-2529 Auburn Correctional Facility P.O. Box 618 Auburn, NY 13021 <sup>1</sup>	
HON. ERIC T. SCHNEIDERMAN Attorney General for the State of New York Attorney for Defendants The Capitol Albany, NY 12224	DAVID L. COCHRAN, ESQ. Ass't Attorney General

<sup>&</sup>lt;sup>1</sup> This is plaintiff's last known address. Mail sent to plaintiff at this address was returned undeliverable on July 30, 2012, and again on September 7, 2012. ECF Nos. 59, 61.

## **DECISION and ORDER**

Plaintiff brought this civil rights action pursuant to 42 U.S.C. § 1983. On February 10, 2012, the Honorable David R. Homer,<sup>2</sup> United States Magistrate Judge, advised, by Report-Recommendation that defendants' unopposed motion for summary judgment for failure to exhaust administrative remedies be granted in part and denied in part. Defendants timely filed objections to the Report-Recommendation.

Based upon a de novo review, the Report-Recommendation is accepted. <u>See</u> 28 U.S.C. § 636(b)(1).

Therefore, it is

ORDERED that

- 1. Defendants' motion for summary judgment is DENIED as to Rodriguez' claims regarding the assault, failure to protect, failure to provide medical treatment, and subsequent retaliatory threats and harassment at Bare Hill Correctional Facility; and
- Defendants' motion for summary judgment is GRANTED with respect to the third, formal grievance regarding the retaliatory threats and harassment at Clinton Correctional Facility and that claim is DISMISSED.

IT IS SO ORDERED.

Dated: April 8, 2013

Utica, New York.

United States District Judge

<sup>&</sup>lt;sup>2</sup> On September 4, 2012, this case was reassigned to United States Magistrate Judge Christian F. Hummel. ECF No. 60.