

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

HAROLD J. SCOTT,

Plaintiff,

vs.

9:10-CV-0230
(NAM)(RFT)

M. NICHOLS; JAMES PAGANO; J. GREY;
DARWIN LECLAIR; KEITH F. DUBRAY; and
P. VANGUILDER,

Defendants.

APPEARANCES:

Harold J. Scott
84-A-4541
Clinton Correctional Facility
P.O. Box 2002
Dannemora, NY 12929
Plaintiff, *Pro Se*

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

DECISION AND ORDER

This action was commenced *pro se* by plaintiff Harold J. Scott by submitting a complaint and *in forma pauperis* application. Dkt. Nos. 1, 2. By Decision and Order filed on April 13, 2010 (“April Order”), the Court found that some of plaintiff’s claims implicate the validity of his disciplinary conviction and sentence because he was subjected to mixed sanctions affecting both the duration and the conditions of his confinement.¹ Dkt. No. 4. Furthermore, the Court ruled that, since plaintiff had not demonstrated that his loss of good time credits had been invalidated, the “favorable termination” rule of *Heck v. Humphrey*, 512 U.S. 477 (1994), bars prosecution of plaintiff’s claims with respect to his disciplinary conviction and sentence unless plaintiff “is willing to forever forego a challenge to the loss of good time which was part of the penalty imposed after the third disciplinary hearing.” *See* Dkt.

¹ The April Order also granted plaintiff’s *in forma pauperis* application. Dkt. No. 4 at 7.

No. 4 at 6; *see also Peralta v. Vasquez*, 467 F.3d 98, 104 (2d Cir. 2006). The Court afforded plaintiff thirty days within which to advise the Court in writing whether he wished to waive his due process claims challenging the loss of good time credits. Dkt. No. 4 at 7. Currently before the Court is plaintiff's response to the April Order. Dkt. No. 5. Plaintiff has advised the Court in writing that he "waives for all times all claims in this action relating to disciplinary sanctions affecting the duration of his confinement regarding the February 26, 2007, Superintendent's Hearing in order to proceed in this action." *Id.* Based upon this waiver, the Court dismisses all claims set forth in the complaint relating to the loss of good time credits and directs service of the complaint with respect to the remaining claims.

WHEREFORE, for the above-stated reasons, it is hereby

ORDERED that all claims set forth in the complaint relating to the loss of good time credits are **DISMISSED**; and it is further

ORDERED that upon receipt from plaintiff of the documents required for service of process, the Clerk shall issue summonses and forward them, along with copies of the complaint, to the United States Marshal for service upon the named defendants. The Clerk shall forward a copy of the summons and complaint by mail to the Office of the New York State Attorney General, together with a copy of this Decision and Order; and it is further

ORDERED that a response to plaintiff's complaint be filed by the defendants or their counsel as provided for in the Federal Rules of Civil Procedure after service of process on the Defendants; and it is further

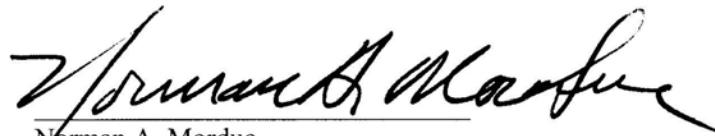
ORDERED that all pleadings, motions and other documents relating to this action be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. **Any paper sent by a party to the**

Court or the Clerk must be accompanied by a certificate showing that a true and correct copy of it was mailed to all opposing parties or their counsel. Any document received by the Clerk or the Court which does not include a certificate of service showing that a copy was served upon all opposing parties or their attorneys will be stricken from the docket. Plaintiff must comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions. Plaintiff is also required to promptly notify, in writing, the Clerk's Office and all parties or their counsel of any change in plaintiff's address; his failure to so may result in the dismissal of this action. All motions will be decided on submitted papers without oral argument unless otherwise ordered by the Court; and it is further

ORDERED that the Clerk shall serve a copy of this Decision and Order on plaintiff.

IT IS SO ORDERED.

Date: May 19, 2010



Norman A. Mordue
Chief United States District Court Judge