

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JOHN COSBY,

Plaintiff,

9:10-CV-0595 (TJM/DEP)

v.

**COLLEEN RUSSELL; ROBERTS J.
LENNOX; DARRELL D. PILON; SCOTT J.
BISHOP; DOUGLAS J. WILSON; KYLE J.
MULVERHILL; MAYO; J. HAYES; E.
PRITCHARD; E. RICH; and W. KLINE,**

Defendants.

**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION & ORDER

I. INTRODUCTION

This *pro se* action brought pursuant to 42 U.S.C. § 1983 was referred to the Hon. David E. Peebles, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). No objections to Magistrate Judge Peebles's February 8, 2012 Report and Recommendation have been filed, and the time to do so has expired. Furthermore, after examining the record, this Court has determined that the Report and Recommendation is not subject to attack for plain error or manifest injustice.

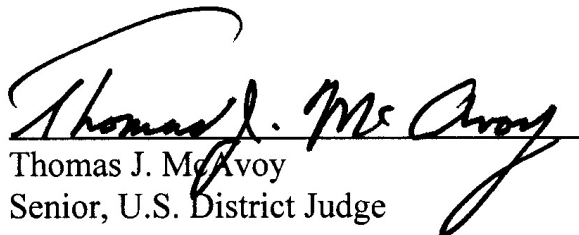
II. CONCLUSION

The Court **ADOPTS** the Report and Recommendation [dkt. # 36] for the reasons stated therein. Therefore, it is hereby

ORDERED that Defendants' motion to dismiss (Dkt. No. 26) is **GRANTED in part and DENIED in part**. The motion is **granted** inasmuch as: (a) Plaintiff's claims against Defendants Russell and Thomas are **dismissed with leave to re-plead**; (b) Plaintiff's causes of action asserting claims arising out of state and federal penal law are **dismissed with prejudice**; and (c) Plaintiff's claim brought under 42 U.S.C. § 1985(3) is **dismissed with leave to re-plead**. Should Plaintiff elect to re-plead the claims against Defendants Russell and Thomas and the claim under 42 U.S.C. § 1985(3), he must file an amended pleading within thirty days of the date of this Decision & Order. An amended pleading must be in conformity with the parameters explained by Magistrate Judge Peebles at page 35 of the Report and Recommendation. The motion is **DENIED** in all other respects.

IT IS SO ORDERED

Dated: March 5, 2012


Thomas J. McAvoy
Senior, U.S. District Judge