

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SHANE ROBERT ROSSETER,

Plaintiff,

-v-

9:10-CV-1097 (NAM/TWD)

**PAUL ANNETTS; JAMES D. BOWEN; DR. G.
CONIGLIO; MALCOM R. CULLY; DR. DePHELIP;
DR. COLLEEN DEUEL; DR. ROBERT G. KERCULL;
SIBATU KHAFIFA; DR. LEWIS; DR. STEPHEN
STRADER; and DAVID UNGER,**

Defendants.

APPEARANCES:

SHANE ROBERT ROSSETER
08-A-1728
Cayuga Correctional Facility
P.O. Box 1186
Moravia, New York 13118
Plaintiff *pro se*

HON. ERIC T. SCHNEIDERMAN, Attorney General of the State of New York
James Seaman, Esq., Assistant New York State Attorney
The Capitol
Albany, New York 12224
Attorney for Defendants Annetts, Coniglio, Cully, Deuel, Khahaifa,
Lewis, and Unger

MAYNARD, O'CONNOR, SMITH
& CATALINOTTO, LLP
Thomas G. Daley, Esq., of counsel
6 Tower Place
Albany, New York 12203
Attorney for Defendant Kercull

BAILEY, KEELEHER & JOHNSON, P.C.
Crystal R. Peck, Esq., of counsel
Pine West Plaza 5, Suite 507 and all claims against him are dismissed
Washington Avenue Extension
Albany, New York 12205
Attorney for Defendants Bowen and Strader

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

MEMORANDUM-DECISION AND ORDER

In this *pro se* action pursuant to 42 U.S.C. § 1983, plaintiff, an inmate in the custody of New York Department of Corrections and Community Services (“DOCCS”), claims that he has been denied medical care in every DOCCS facility in which he has been housed since he allegedly sustained injuries at Saratoga County Correctional Facility in November 9, 2007. The following motions are before the Court: a motion to dismiss (Dkt. No. 51) by defendants Annetts, Coniglio, Cully, Deuel, Khahaifa, Lewis, and Unger (collectively, “State defendants”); a motion for summary judgment (Dkt. No. 88) by defendant Kercull; and a motion for summary judgment (Dkt. No. 90) by defendants Bowen and Strader. 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 has prepared a thorough Report-Recommendation and Order (Dkt. No. 109) recommending as follows: that the dismissal motion (Dkt. No. 51) by the State defendants be granted with leave to amend as to defendants Annetts, Unger, Khahaifa, Lewis, Cully and Deuel, and denied as to defendant Coniglio; that the summary judgment motion (Dkt. No. 88) by defendant Kercull be granted on the merits and all claims against him are dismissed ; that the summary judgment motion (Dkt. No. 90) by defendants Strader and Bowen be granted on the merits; and that the action be transferred to the Western District of New York. Magistrate Judge Dancks also denied without prejudice plaintiff’s motion (Dkt. No. 77) to appoint a medical expert.

Plaintiff has filed extensive objections (Dkt. No. 114), which the Court has reviewed carefully. Upon *de novo* review pursuant to 28 U.S.C. § 636(b)(1)(C), this Court adopts the Report-Recommendation and Order in its entirety.

It is therefore

ORDERED that the Report-Recommendation and Order (Dkt. No. 109) by United States Magistrate Judge Thérèse Wiley Dancks is accepted and adopted; and it is further

ORDERED that the motion to dismiss (Dkt. No. 51) by the State defendants is granted in

part and denied in part as follows: dismissal of all claims against defendants Paul Annetts, Malcom R. Cully, Dr. Colleen Deuel, Sibatu Khafaifa, Dr. Lewis, and David Unger is granted with leave to amend; and dismissal of the claims against Dr. G. Coniglio is denied; and it is further

ORDERED that the summary judgment motion (Dkt. No. 88) by defendant Robert G. Kercull is granted and all claims against him are dismissed with prejudice; and it is further

ORDERED that the summary judgment motion (Dkt. No. 90) by defendants Stephen Strader and James D. Bowen is granted and all claims against them are dismissed with prejudice; and it is further

ORDERED that the action is transferred to the Western District of New York; 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 27, 2012
Syracuse, New York


Honorable Norman A. Mordue
U.S. District Judge

M