

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAMEL KING,

Plaintiff,

No. 9:11-CV-1457

-v-

C.O. MCINTYER; LT. MCDERMOTT; C.O.
STEVENS; SGT. YOUNG; C.O. KANE; C.O.
HESSLE; C.O. DOTY; C.O. CATLIN; DEPT.
C. MILLER; COMM. BRIAN FISCHER; and
SUP. MARTUSCELLO,

Defendants.

APPEARANCES:

OF COUNSEL:

JAMEL KING, 01-A-4949
Plaintiff pro se
Elmira Correctional Facility
P.O. Box 500
Elmira, NY 14902

HON. ERIC T. SCHNEIDERMAN
Attorney General for the State of New York
Attorney for Defendants
The Capitol
Albany, NY 12224

DOUGLAS J. GOGLIA, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff Jamel King brought this action pursuant to 42 U.S.C. § 1983. On December 31, 2013, the Honorable Thérèse Wiley Dancks, United States Magistrate Judge,

advised by Report-Recommendation that defendants' motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) be granted in part and denied in part. No objections to the Report-Recommendation were filed.¹

Based upon a careful review of the entire file and the recommendations of the Magistrate Judge, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

Therefore, it is

ORDERED that

1. Defendants' motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) is GRANTED in part and DENIED in part;

2. Plaintiff's official capacity claims for damages against all defendants are DISMISSED;

3. Plaintiff's claim for injunctive relief in the form of stopping harassment at the Coxsackie Correctional Facility is DISMISSED;

4. Plaintiff's claims against defendant Doty are sua sponte DISMISSED without prejudice for failure to serve that defendant; and

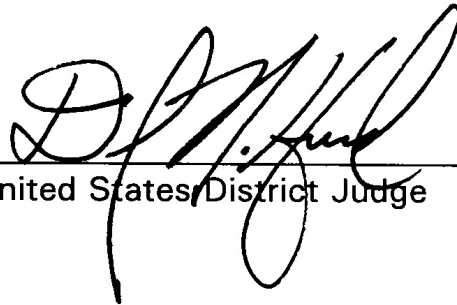
5. The remaining defendants C.O. McIntyer; Lt. McDermott; C.O. Stevens; Sgt. Young; C.O. Kane; C.O. Hesse; C.O. Catlin; Dept. C. Miller; Comm. Brian Fischer; and Sup. Martuscello are directed to respond to the complaint as provided for in the Federal Rules of Civil Procedure.

The Clerk is directed to serve a copy of this Decision and Order upon plaintiff in

¹ Plaintiff requested an extension of time to file objections to the Report-Recommendation and was granted until February 7, 2014 to do so.

accordance with the Local Rules.

IT IS SO ORDERED.



United States District Judge

Dated: February 20, 2014
Utica, New York.