

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

RALIK HAMILTON,

Plaintiff,

-against-

9:12-CV-0744

**MICHAEL GRAZIANO, Superintendent,
Green Correctional Facility, et al.,**

Defendants.

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

DECISION & ORDER

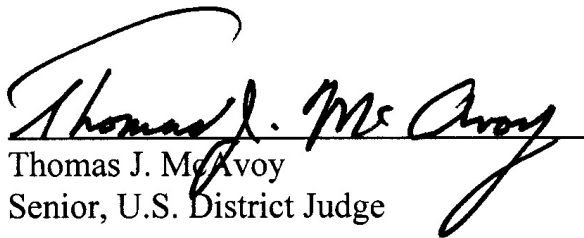
This action, brought pursuant to 42 U.S.C. § 1983, was referred by this Court to the Honorable David E. Peebles, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). No objections to the Report-Recommendation have been filed.

In a Report-Recommendation dated March 15, 2013, Magistrate Judge Peebles recommended that Defendants' motion to dismiss be granted as to Plaintiff's deliberate medical indifference claim. Plaintiff was granted leave to amend the initial complaint to set forth more specific factual inquiries regarding the claim. Further, Magistrate Judge Peebles recommended that Defendants' motion to dismiss be denied as to Plaintiff's excessive force claim. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice. Accordingly, this Court adopts the Report-Recommendation for the reasons stated therein.

For the foregoing reasons, the Court ADOPTS the Report-Recommendation in

its entirety. It is therefore **ORDERED** that Defendants' motion to dismiss is GRANTED in part and Plaintiff's deliberate medical indifference claim against Graziano be dismissed. Plaintiff is granted leave to file an amended complaint, which he has now done. It is further **ORDERED** that Defendants' motion to dismiss is otherwise DENIED. **IT IS SO ORDERED.**

Dated: April 25, 2013


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