

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

DYLAN GIBBONS,

Plaintiff,

v.

**9:12-CV-1605
(FJS/RFT)**

**S. PRINDLE, Correctional Officer, Eastern Correctional
Facility,**

Defendant.

APPEARANCES

OF COUNSEL

DYLAN GIBBONS

02-A-2053

Five Points Correctional Facility

Caller Box 119

Romulus, New York 14541

Plaintiff *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**

The Capitol

Albany, New York 12224

Attorneys for Defendant

GREGORY J. RODRIGUEZ, AAG

SCULLIN, Senior Judge

ORDER

Currently before the Court is Magistrate Judge Treece's September 18, 2013 Report-Recommendation and Order, in which he recommended that this Court grant Defendant's motion for partial dismissal as it pertains to Plaintiff's Eighth Amendment claim for sexual assault and any state tort claims. *See* Dkt. No. 18 at 8. Magistrate Judge Treece further recommended that the Court direct Defendant Prindle to file an answer regarding Plaintiff's surviving Eighth Amendment claim of excessive force. *See id.* The parties did not file any objections to these recommendations.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting this review, "the Court may 'accept, reject, or modify in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Treece's September 18, 2013 Report-Recommendation and Order for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Treece's September 18, 2013 Report-Recommendation and Order is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Defendant's motion for partial dismissal is **GRANTED**; and Plaintiff's Eighth amendment claim for sexual assault and any state tort claims are **DISMISSED**, and the Court further


ORDERS that Defendant Prindle shall file an answer to Plaintiff's Eighth Amendment claim of excessive force within **ten (10) days** of the date of this Order; and the Court further

ORDERS that this matter is referred to Magistrate Judge Treece for all further pretrial matters; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: October 18, 2013
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge