

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MOSHE CINQUE CANTY,

Plaintiff,

v.

9:14-CV-1097
(GTS/DEP)

ALLEN, Corr. Lieutenant/Watch Commander;
T. TAMER, Corr. Sergeant; S. SWEENEY, Corr.
Sergeant; PAUL FESSETTE, Corr. Sergeant;
BROOKS, Corr. Sergeant; D. VENNE, Corr.
Officer; L. MARTIN, Corr. Officer; C. HEATH,
Corr. Officer; TARALLO, Corr. Officer; FRENYA,
Corr. Officer; and E. DROLLETTE, Corr. Officer,

Defendants.

APPEARANCES:

OF COUNSEL:

MOSHE CINQUE CANTY, 99-A-6830
Plaintiff, *Pro Se*
Shawangunk Correctional Facility
P.O. Box 700
Wallkill, New York 12589

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

ORIANA L. CARRAVETTA, ESQ.
Assistant Attorney General

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* prisoner civil rights action filed by Moshe Cinque Canty (“Plaintiff”) against the above-captioned employees of the New York State Department of Corrections and Community Supervision (“Defendants”), are Defendants’ motion for partial summary judgment seeking dismissal of Plaintiff’s First Amendment retaliation

claims and United States Magistrate Judge David E. Peebles' Report-Recommendation recommending that Defendants' motion be granted. (Dkt. Nos. 61, 65.) None of the parties have filed objections to the Report-Recommendation and the deadline in which to do so has expired. (*See generally* Docket Sheet.)

After carefully reviewing the relevant papers herein, including Magistrate Judge Peebles thorough Report-Recommendation, the Court can find no clear-error in the Report-Recommendation:¹ Magistrate Judge Peebles employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein. (Dkt. No. 65, at Part II.)

ACCORDINGLY, it is

ORDERED that Magistrate Judge Peebles' Report-Recommendation (Dkt. No. 65) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that Defendants' motion for partial summary judgment (Dkt. No. 61) is **GRANTED**; and it is further

ORDERED that Plaintiff's First Amendment retaliation claims against Defendants Allen, Brooks, Drollette, Fessette, Frenya, and Tarallo are **DISMISSED**, and those six Defendants are **TERMINATED** as parties in this action; and it is further

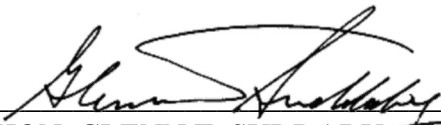
¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a "clear error" review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; see also *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

ORDERED that **REMAINING** in this action are Plaintiff's Eighth Amendment excessive-force claim against Defendants Heath, Martin, Tamer, Venne and Sweeney; and it is further

ORDERED that Pro Bono Counsel be appointed for the Plaintiff for purposes of trial only; any appeal shall remain the responsibility of the plaintiff alone unless a motion for appointment of counsel for an appeal is granted; and it is further

ORDERED that upon assignment of Pro Bono Counsel, a pretrial conference with counsel will be scheduled in this action, at which time the Court will schedule for trial Plaintiff's Eighth Amendment excessive force claim against Defendants Heath, Martin, Tamer, Venne and Sweeney. The parties are directed to appear at that pretrial conference with settlement authority.

Dated: December 1, 2016
Syracuse, New York


HON. GLENN T. SUDDABY
Chief United States District Judge