

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TERELL K. ELEBY

Plaintiff,

vs.

9:15-cv-00281
(TJM/DEP)

G. SMITH, et al.,

Defendants.

Thomas J. McAvoy,
United States District Judge

ORDER

This action, brought pursuant to 42 U.S.C. § 1983, alleges that the two remaining Defendants violated Plaintiff's constitutional rights by assaulting him at the Auburn Correctional Facility in Auburn, New York. The action was referred to the Hon. 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).

The Report-Recommendation, dated January 9, 2017, recommended that the Court grant the Defendants' motion for summary judgment and dismiss the case.

The Plaintiff filed timely objections to the Report-Recommendation. When objections to a magistrate judge's Report-Recommendation are lodged, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or

recommendations to which objection is made.” See 28 U.S.C. § 636(b)(1). After such a review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.” Id.

Having reviewed the record *de novo* and having considered the issues raised in the Plaintiff’s objections, this Court has determined to accept and adopt the recommendation of Magistrate Judge Peebles for the reasons stated in the Report-Recommendation.

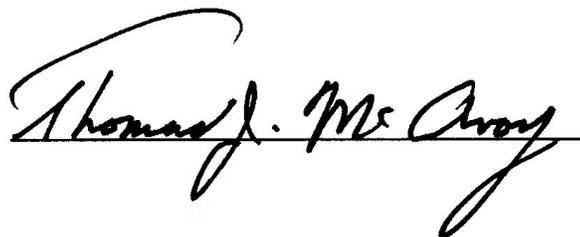
It is therefore

ORDERED that the Plaintiffs’ objections to the Report-Recommendation of Magistrate Judge Peebles, dkt. # 37, are hereby **OVERRULED**. The Report-Recommendation, dkt. # 36, is hereby **ADOPTED**, and:

1. The Defendants’ motion for summary judgment, dkt. # 29, is hereby **GRANTED**; and
2. The action is **DISMISSED**.

IT IS SO ORDERED.

Dated: March 13, 2017

A handwritten signature in black ink, reading "Thomas J. McCreary". The signature is written in a cursive style and is positioned above a horizontal line.