

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

ARRELLO BARNES,

Plaintiff,

**9:15-cv-777
(GLS/DEP)**

v.

ANTHONY ANNUCCI, *et al.*,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

ARRELLO BARNES
00-A-0597
Shawangunk Correctional Facility
P.O. Box 700
Wallkill, New York 12589

FOR DEFENDANTS:

HON. ERIC T. SCHNEIDERMAN
New York State Attorney General
The Capitol
Albany, New York 12224

COLLEEN G. GALLIGAN
Assistant Attorney General

**Gary L. Sharpe
Senior District Judge**

ORDER

The above-captioned matter comes to this court following a Report and Recommendation by Magistrate Judge David E. Peebles, duly filed on

July 14, 2017. (Dkt. No. 70.) Following fourteen days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections¹ having been filed, and the court having reviewed the Report-Recommendation and Order for clear error, it is hereby

ORDERED that the Report and Recommendation (Dkt. No. 70) is **ADOPTED** in its entirety; and it is further

ORDERED that defendants' motion to dismiss (Dkt. No. 61) is **GRANTED** with respect to the following causes of action and that they are **DISMISSED** without prejudice to plaintiff's filing of his second amended complaint, which has already been filed (Dkt. No. 72) that cures the deficiencies identified in the Report and Recommendation: (1) plaintiff's First Amendment free speech claims asserted against defendants McKeighan, Frazier, Whitford, Maxwell, and Borowski; (2) plaintiff's First Amendment access to courts claim asserted against defendants Bell, Narkiewicz, and West; (3) plaintiff's Fourteenth Amendment due process

¹ On July 21, 2017, plaintiff filed a letter "object[ing]" to the Report and Recommendation. (Dkt. No. 71.) However, plaintiff does not cite any basis or arguments for his "objection." (*Id.*) Furthermore, on July 24, 2017, plaintiff filed his second amended. (Dkt. No. 72.)

claims asserted against defendants Frazier, Ollies, Mahuta, Hanson, Maxwell, Whitford, and Borowski; and (4) plaintiff's supervisor liability claims asserted against defendants Annucci and Venetozzi; and it is further

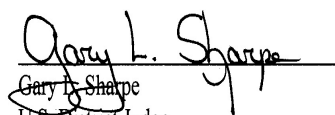
ORDERED that defendants Frazier, Whitford, Maxwell, Borowski, Bell, Narkiewicz, West, Annucci, and Venetozzi are DISMISSED from the action; and it is further

ORDERED that, if plaintiff's second amended complaint does not cure the deficiencies identified in the Report and Recommendation the following causes of action survive defendants' motion and proceed to discovery: (1) plaintiff's First Amendment free speech claims asserted against defendants Ollies and Mahuta; (2) plaintiff's First Amendment free exercise claim asserted against defendant Mahuta; (3) plaintiff's Fourteenth Amendment due process claims asserted against defendants Coveny and McKeighan; and it is further

ORDERED that the Clerk provide a copy of this Order to the parties in accordance with the Local Rules of Practice.

IT IS SO ORDERED.

September 1, 2017
Albany, New York


Gary L. Sharpe
U.S. District Judge