

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANGEL ORDONEZ,

Plaintiff,

-v-

9:15-CV-1198
(DNH/DEP)

JOSEPH BEATTY, Correctional Officer, Great Meadow Correctional Facility; CLARENCE LEDUKE, Correctional Officer, Great Meadow Correctional Facility; CHRISTOPHER BASCUE, Correctional Sergeant, Great Meadow Correctional Facility; SERGEANT LOWERY, Correctional Sergeant, Great Meadow Correctional Facility; and CHRISTOPHER MILLER, Superintendent, Great Meadow Correctional Facility,

Defendants.

APPEARANCES:

OF COUNSEL:

ANGEL ORDONEZ
Plaintiff pro se
349-170-4675
AMKC
18-18 Hazen Street
East Elmhurst, NY 11370

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

BRIAN W. MATULA, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff Angel Ordonez brought this civil rights action pursuant to 42 U.S.C. § 1983. On August 22, 2017, the Honorable David E. Peebles, United States Magistrate Judge, advised by Report-Recommendation that defendants' motion for summary judgment be granted in part and denied in part. Magistrate Judge Peebles recommended that plaintiff's equal protection and racial discrimination claims against defendants Beatty and Lowery be dismissed but that plaintiff's Eighth Amendment conditions of confinement claim against defendants Beatty, Leduke, Bascue, Lowery, and Miller proceed to trial. No objections to the Report-Recommendation were filed.

Based upon a careful review of the Report-Recommendation, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

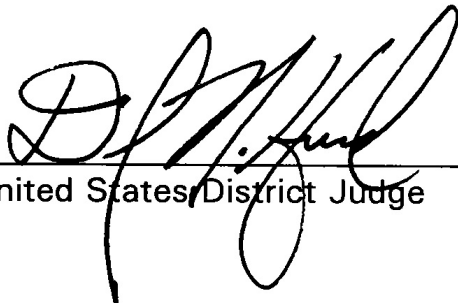
Therefore, it is

ORDERED that

1. Defendants' motion for summary judgment is GRANTED in part and DENIED in part;
2. Defendants' motion for summary judgment on plaintiff's equal protection and racial discrimination claims against defendants Beatty and Lowery is GRANTED and those claims are DISMISSED;
3. Defendants' motion for summary judgment on plaintiff's Eighth Amendment conditions of confinement claim is DENIED and that claim remains for trial;
4. The following claim remains for trial: Eighth Amendment conditions of confinement claim asserted against defendants Beatty, Leduke, Bascue, Lowery, and Miller;

5. Trial in this matter is scheduled for March 12, 2018 in Utica, New York¹; and
6. Pro bono trial counsel be appointed for plaintiff.

IT IS SO ORDERED.



United States District Judge

Dated: September 27, 2017
Utica, New York.

¹ The parties are encouraged to consent to a jury trial before Magistrate Judge Peebles who is very familiar with this case.

The Clerk is directed to send a consent form to the parties to be completed, if possible, and returned to the Clerk on or before November 1, 2017.