

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

GREGORY GALBERTH,

Plaintiff,

vs.

**9:15-CV-1443
(TJM/TWD)**

J. BIELWIEZ, et al.,

Defendants.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

The Court referred this *pro se* civil action, brought pursuant to 42 U.S.C. § 1983, to Magistrate Judge Thérèse Wiley Dancks for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Plaintiff alleges that the Defendants, New York State prison guards and employees, violated his Eighth Amendment rights in the conditions of his confinement and by using excessive force against him.

Magistrate Judge Dancks's Report-Recommendation, dkt. # 157, issued on September 20, 2019, recommends that Defendants' motion to dismiss for failure to prosecute be granted. Magistrate Judge Dancks finds that Plaintiff has repeatedly refused to sit for a deposition, defied court orders to appear, and ignored warnings that the case could be dismissed for failure to prosecute if he did not make himself available for discovery. Finding that Plaintiff has wilfully refused to participate in the matter, ignored

court orders, repeatedly missed scheduled depositions, and failed to keep the Clerk of Court updated with his current address despite direction from the Court, Magistrate Judge Dancks concluded that no option existed but to grant the Defendants' motion to dismiss.

The docket indicates that on October 21, 2019, the Plaintiff called the Clerk of Court from Rikers Island in New York City. The Clerk informed him of Magistrate Judge Dancks' Report-Recommendation, and Plaintiff claimed he had never received a copy. Despite direction from the Court, Plaintiff did not provide a written change of address in the six weeks since that conversation. While that conduct supports the Magistrate Judge's conclusion that the motion to dismiss should be granted, the Court will treat these communications as evidence that Plaintiff objects to the Magistrate Judge's recommendation that the Court grant Defendants' motion to dismiss. When a party objects to a magistrate judge's Report-Recommendation, 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.

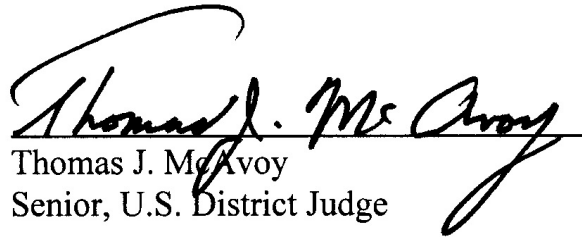
Having engaged in a *de novo* review of the Magistrate Judge's Report-Recommendation, the Court will accept and adopt the Report-Recommendation for the reasons stated therein.

Accordingly,

The Report-Recommendation of Magistrate Judge Dancks, dkt. # 157, is hereby **ACCEPTED** and **ADOPTED**. Defendants' motion to dismiss for failure to prosecute, dkt. #

153, is hereby **GRANTED**. The Clerk of Court is directed to **CLOSE** the case.

IT IS SO ORDERED.


Thomas J. McAvoy
Senior, U.S. District Judge

Dated: November 12, 2019