

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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DEREK A. HEYLIGER,

Plaintiff,

-v-

9:17-CV-912  
(DNH/CFH)

ANDREW CYMBRAK, in his individual capacity as Correctional Officer, Clinton Correctional Facility, formerly known as A. Cymbrak; CHRISTOPHER LAGREE, in his individual capacity as Correctional Officer, Clinton Correctional Facility, formerly known as C. Lagree; KYLE GUYNUP, in his individual capacity as Correctional Officer, Clinton Correctional Facility, formerly known as Kile Guynup; A. MUSSEN, in his individual capacity as Correctional Officer, Clinton Correctional Facility; KEVIN WILCOX, in his individual capacity as Correctional Officer, Clinton Correctional Facility, formerly known as K. Wilcox; LIAM MAHONEY, in his individual capacity as Correctional Officer, Clinton Correctional Facility, formerly known as L. Maloney; WILLIAM PERRY, in his individual capacity as Correctional Officer, Clinton Correctional Facility; LAFOUNTAIN, in his individual capacity as Correctional Officer, Clinton Correctional Facility; ANTHONY ANNUCCI, in his individual capacity as DOCCS CORC Acting Commissioner of Corrections; KAREN BELLAMY, in her individual capacity as DOCCS CORC Director Inmate Grievance Program; CATHERINE LEAHY SCOTT, in her individual capacity as New York State Inspector General; CHARLES SIMPSON, in his individual capacity as DOCCS CORC Inmate Grievance Coordinator; JASON EFFMAN, in his individual capacity as DOCCS CORC Inmate Grievance Program Coordinator; and REBECCA LOREN, in her individual capacity as DOCCS CORC Inmate Grievance Program Coordinator,

Defendants.

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APPEARANCES:

OF COUNSEL:

DEREK A. HEYLIGER  
Plaintiff, Pro Se  
12-B-0269  
Sing Sing Correctional Facility  
354 Hunter Street  
Ossining, NY 10562

HON. LETITIA JAMES  
Attorney General for the State of New York  
Attorney for Defendant  
The Capitol  
Albany, NY 12224

WILLIAM A. SCOTT, ESQ.  
Ass't Attorney General

DAVID N. HURD  
United States District Judge

**DECISION and ORDER**

Pro se plaintiff Derek A. Heyliger brought this civil rights action pursuant to 42 U.S.C. § 1983. On December 16, 2019, the Honorable Christian F. Hummel, United States Magistrate Judge, advised by Report-Recommendation that defendants' motion for partial summary judgment be granted and that plaintiff's cross-motion for partial summary judgment be denied. Magistrate Judge Hummel further recommended that, pursuant to plaintiff's stipulation, several claims also be dismissed. No objections to the Report-Recommendation have been filed.

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

Therefore, it is

ORDERED that

1. Defendants' motion for partial summary judgment is GRANTED;

2. Plaintiff's Eighth Amendment conditions of confinement claim against defendant Lafountain regarding his food is DISMISSED;

3. Plaintiff's cross-motion for partial summary judgment is DENIED;

4. Pursuant to plaintiff's stipulations, the following claims are DISMISSED with prejudice: (1) plaintiff's First Amendment retaliation claims against defendants Cymbrak, Guynup, Lafountain, Lagree, Mahoney, Mussen, Perry, and Wilcox insofar as those claims are based on the alleged October 28, 2015 assault; (2) all claims against defendants Annucci, Bellamy, Effman, Loren, Simpson, and Leahy Scott; and (3) plaintiff's excessive force claims against defendants Mahoney and Lafountain;

5. The action is terminated as to defendants Annucci, Bellamy, Effman, Loren, Simpson, and Leahy Scott;

6. The following claims remain for trial: (1) plaintiff's Eighth Amendment excessive force claims against defendants Cymbrak, Guynup, Lagree, Mussen, Wilcox, and Perry based on an alleged October 28, 2015 use of force; (2) plaintiff's racial discrimination claim against defendant Lagree relating to the October 28, 2015 incident; and (3) plaintiff's First Amendment retaliation claim against defendant Lafountain alleging food tampering, destruction of property, and falsification of property transfer documents; and

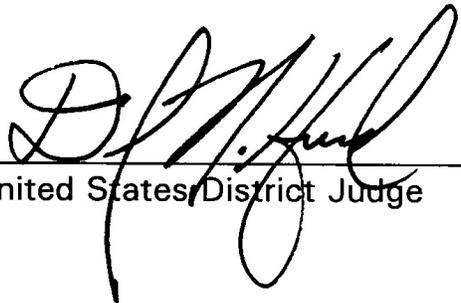
7. Trial is tentatively scheduled for July 20, 2020 at 9:30 a.m. in Utica, New York. Pre-trial submissions are due on or before July 6, 2020;

8. The parties are directed to advise the Court on or before April 1, 2020 whether or not a consent to a jury trial before Magistrate Judge Hummel pursuant to 28 U.S.C.

§ 636(c) will be executed based on his familiarity with the case; and

9. Plaintiff's prior motion for the appointment of counsel is considered renewed and the Clerk is directed to appoint plaintiff pro bono trial counsel.

IT IS SO ORDERED.



United States District Judge

Dated: February 11, 2020  
Utica, New York.