

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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MURRAY HALL, III,

Plaintiff,

9:17-CV-1069  
(GTS/DEP)

v.

ANTHONY J. ANNUCCI, Comm'r.; DANIEL  
MARTUSCELLO, Dep. Comm'r. for Admin. Servs.,  
DOCCS, f/k/a Daniel Mortuscello; JEFF MCKOY,  
Dep. Comm'r for Program Servs., DOCCS;  
BRANDON SMITH, Super., Greene C.F.; and  
DEACON YOUNG, Chaplain, Greene. C.F.,

Defendants.

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APPEARANCES:

OF COUNSEL:

MURRAY HALL, III  
Plaintiff, *Pro Se*  
93 North Fair Field Drive  
Dover, Delaware 19901

HON. BARBARA D. UNDERWOOD  
Attorney General for the State of New York  
Counsel for Defendants  
The Capitol  
Albany, New York 12224

KYLE W. STURGESS, ESQ.  
Assistant Attorney General

GLENN T. SUDDABY, Chief United States District Judge

**DECISION and ORDER**

Currently before the Court, in this *pro se* prisoner civil rights action filed by Murray Hall, III (“Plaintiff”) against the five above-captioned employees of the New York State Department of Corrections and Community Supervision (“Defendants”) are (1) Defendants’ motion for summary judgment and (2) United States Magistrate Judge David E. Peebles’ Report-Recommendation recommending that Defendants’ motion be granted. (Dkt. Nos. 23, 32.) None

of the parties have filed objections to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.)

After carefully reviewing the relevant papers herein, including Magistrate Judge Peebles' thorough Report-Recommendation, the Court can find no clear-error in the Report-Recommendation.<sup>1</sup> Magistrate Judge Peebles employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons stated therein;<sup>2</sup> Defendants' motion for summary judgment is granted; and Plaintiff's Amended Complaint is dismissed in its entirety.

**ACCORDINGLY**, it is

**ORDERED** that Magistrate Judge Peebles' Report-Recommendation (Dkt. No. 32) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

**ORDERED** that Defendants' motion for summary judgment (Dkt. No. 23) is **GRANTED**; and it is further

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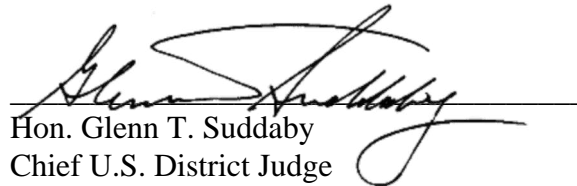
<sup>1</sup> When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a "clear error" review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; *see also* *Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at \*1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

<sup>2</sup> The Court would add only that an alternative reason for not affording Plaintiff an opportunity to amend his pleading before dismissing his action is that he has already been afforded such an opportunity to amend (his operative pleading being his *Amended Complaint*). *See Abascal v. Hilton*, 04-CV-1401, 2008 WL 268366, at \*8 (N.D.N.Y. Jan. 13, 2008) (Kahn, J., adopting, on *de novo* review, Report-Recommendation by Lowe, M.J.) ("[G]ranting a *pro se* plaintiff an opportunity to amend is not required where the plaintiff has already been given a chance to amend his pleading."), *aff'd*, 357 F. App'x 388 (2d Cir. 2009); *see also* *Bratton v. Fitzpatrick*, 12-CV-0204, 2012 WL 4754558, at \*2 & n.2 (N.D.N.Y. Oct. 4, 2012) (Suddaby, J.) (collecting cases).

**ORDERED** that Plaintiff's Amended Complaint (Dkt. No. 13) is **DISMISSED** in its entirety, and the Clerk of Court shall enter Judgment for Defendants and close this action.

The Court certifies that an appeal from this Decision and Order would not be taken in good faith pursuant 28 U.S.C. § 1915(a)(3).

Dated: December 17, 2018  
Syracuse, New York

  
Hon. Glenn T. Suddaby  
Chief U.S. District Judge