

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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EDERICK FABRIZIO, a/k/a Ederick Fabricio,

Plaintiff,

9:18-CV-0339  
(GTS/ML)

v.

COMM’R ANTHONY J. ANNUCCI, NYS Dept. of  
Corr. and Comm. Supervision; SUPT. BRANDON  
SMITH, Supt., Greene C.F.; THOMAS MAURO,  
IGP Super., Greene C.F., f/k/a T. Mauro; BRIAN  
SULLIVAN, Corr. Officer, Greene C.F., f/k/a Lt.  
Sullivan; C.O. OLIVER, Corr. Officer, Greene. C.F.;  
C.O. LASTER, Corr. Officer, Greene C.F.; JAMES  
REILLY, Corr. Officer, Greene C.F., f/k/a John  
Doe #2, f/k/a C.O. Riley; and DANIEL GALIOTO,  
Corr. Officer, Greene C.F., f/k/a Sgt. Galioto,

Defendants.

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APPEARANCES:

OF COUNSEL:

EDERICK FABRIZIO, 97-A-2265  
Plaintiff, *Pro Se*  
Otisville Correctional Facility  
Box 8  
Otisville, New York 10963

HON. LETITIA A. JAMES  
New York State Attorney General  
Counsel for Defendants  
The Capitol  
Albany, New York 12224

NICHOLAS LUKE ZAPP, 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 Ederick  
Fabrizio (“Plaintiff”) against the above-captioned employees of the New York State Department

of Corrections and Community Supervision (“Defendants”) pursuant to 42 U.S.C. § 1983, is Chief United States Magistrate Judge David E. Peebles’ Report-Recommendation recommending that Defendants’ motion for summary judgment be granted, and that Plaintiff’s Amended Complaint be dismissed without prejudice, on the grounds that Plaintiff failed to exhaust his available administrative remedies before filing this action. (Dkt. No. 60.) 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, Defendants’ motion for summary judgment is granted, and Plaintiff’s Amended Complaint is dismissed without prejudice.

**ACCORDINGLY**, it is

**ORDERED** that Magistrate Judge Peebles’ Report-Recommendation (Dkt. No. 60) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further


**ORDERED** that Defendants’ motion for summary judgment (Dkt. No. 50) is **GRANTED**, Plaintiff’s Amended Complaint (Dkt. No. 9) is **DISMISSED without prejudice**,

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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).

and the Clerk of Court shall enter Judgment for Defendants and close this action.

Dated: July 25, 2019  
Syracuse, New York

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