

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

EDWARD RANDOLPH,

Plaintiff,

-v-

9:19-CV-639¹
(DNH/ATB)

J. PREIUER, Correction Officer, Great Meadow Correctional Facility; A. ROSE, Correction Officer, Great Meadow Correctional Facility; DOE WAGNER, Captain, Great Meadow Correctional Facility; ANTHONY J. ANNUCCI, Acting Commissioner of DOCCS; D. VENETTOZZI, Director of Special Housing; J. VANDERBURGH, Correction Officer, Great Meadow Correctional Facility; and DOE NESMITH, Physician's Assistant, Great Meadow Correctional Facility,

Defendants.

APPEARANCES:

OF COUNSEL:

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Plaintiff pro se
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CHRISTOPHER J. HUMMEL, ESQ.
Ass't Attorney General

¹ The docket sheet indicates that there is a member case for this action—9:19-CV-640. However, defendants' motion in this action applies only to the fact in this case.

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff Edward Randolph brought this civil rights action pursuant to 42 U.S.C. § 1983. On July 31, 2020, the Honorable Andrew T. Baxter, United States Magistrate Judge, advised by Report-Recommendation that defendants Annucci and Venetozzi's motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) be granted in part and denied in part. No objections to the Report-Recommendation were filed.

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

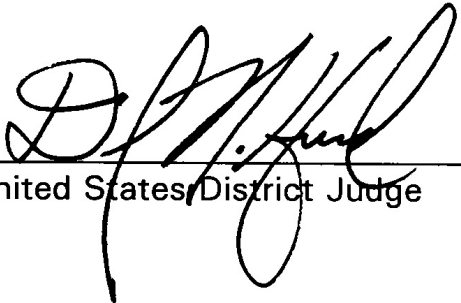
Therefore, it is

ORDERED that

1. Defendants' motion to dismiss is GRANTED in part and DENIED in part;
2. Defendants' motion to dismiss is GRANTED IN ITS ENTIRETY as to defendant Annucci and all claims against him are DISMISSED;
3. Defendants' motion to dismiss is GRANTED IN PART with respect to defendant Venetozzi as to any due process claims arising from the September 16, 2016 disciplinary hearings and with respect to any due process claims arising from the May 2017 rehearing regarding the August 9, 2016 incident;
4. Defendants' motion to dismiss is DENIED in all other respects as to defendant Venetozzi, without prejudice to the filing of a properly supported motion for summary judgment on his behalf; and

5. Defendant Venetozzi is directed to file an answer to the remaining claims asserted against him within twenty (20) days of the date of this Decision and Order.

IT IS SO ORDERED.



United States District Judge

Dated: September 30, 2020
Utica, New York.