

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

K'VAR TILLMAN,

Plaintiff,

-against-

9:19-CV-1597 (LEK/CFH)

TREVOR PHILLIPS, *et al.*,

Defendants.

DECISION AND ORDER

I. INTRODUCTION

Plaintiff K'var Tillman brings this pro se action against Sergeant ("Sgt.") Trevor Phillips, Sgt. Timothy Clark, Sgt. Michael Clark, Correction Officer ("C.O.") J. Sorensen, C.O. Danny Putnam, and C.O. John Putnam (collectively, "Defendants"). Plaintiff commenced this action on December 23, 2019. Dkt. No. 1 ("Complaint"). On January 2, 2020, the Court ordered administrative closure for failure to properly comply with the Filing Fee Requirement. Dkt. No. 4. On January 10, 2020, Plaintiff filed a motion for leave to proceed in forma pauperis ("IFP") and the case was reopened. Dkt. Nos. 5, 6.

On April 4, 2020, the Court issued a Decision and Order. Dkt. No. 7. In that Decision and Order, the Court granted Plaintiff's motion to proceed IFP, and allowed the following claims to survive sua sponte review: (1) Plaintiff's Eighth Amendment excessive-force and failure-to-intervene claims against D. Putnam, J. Putnam, Sorenson, Phillips, Clark, and Clarke for their January 31, 2019 assault of Plaintiff; and (2) Plaintiff's equal-protection claim against Phillips.

Following discovery, on April 1, 2021, Defendants filed a motion for summary judgement, Dkt. No. 26 (“Motion”), arguing that Plaintiff had failed to exhaust administrative remedies as required by law. Dkt. No. 26-1. at 2. On November 10, 2021, Magistrate Judge Christian Hummel recommended that summary judgement be denied and an exhaustion hearing be scheduled. Dkt. No. 33 (“Report-Recommendation”) at 2. No objections to the Report-Recommendation have been filed in this case. See Docket.

For the reasons discussed below, the Court adopts the Report-Recommendation in its entirety.

II. BACKGROUND

Plaintiff’s factual allegations are detailed in Judge Hummel’s Report-Recommendation, familiarity with which is assumed. See R. & R. at 2–4.

III. LEGAL STANDARD

Within fourteen days after a party has been served with a copy of a magistrate judge’s report-recommendation, the party “may serve and file specific, written objections to the proposed findings and recommendations.” Fed. R. Civ. P. 72(b); see also L.R. 72.1(c). A court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). However, if no objections are made, or if an objection is general, conclusory, perfunctory, or a mere reiteration of an argument made to the magistrate judge, a district court need review that aspect of a report-recommendation only for clear error. See *Barnes v. Prack*, No. 11-CV-857, 2013 WL 1121353, at *1 (N.D.N.Y. Mar. 18, 2013); see also *Demuth v. Cutting*, No. 18-CV-789, 2020 WL 950229, at *2 (N.D.N.Y. Feb. 27, 2020) (Kahn, J.). “[I]t is established law that a

district judge will not consider new arguments raised in objections to a magistrate judge’s report and recommendation that could have been raised before the magistrate but were not.” Zhao v. State Univ. of N.Y., 04-CV-0210, 2011 WL 3610717, at *1 (E.D.N.Y. Aug. 15, 2011) (internal quotation marks and citation omitted); see also Hubbard v. Kelley, 752 F. Supp. 2d 311, 312–13 (W.D.N.Y. 2009) (“In this circuit, it is established law that a district judge will not consider new arguments raised in objections to a magistrate judge’s report and recommendation that could have been raised before the magistrate but were not.”) (internal quotation marks omitted). “A [district] judge . . . may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” § 636(b).

IV. DISCUSSION

Here, no objections have been raised in the allotted time with respect to Magistrate Judge Hummel’s Report-Recommendation. Consequently, the Court reviews the Report-Recommendation for clear error and finds none. Therefore, the Court adopts the Report-Recommendation in its entirety.

V. CONCLUSION

Accordingly, it is hereby:

ORDERED, that the Report-Recommendation (Dkt. No. 33) is **APPROVED and ADOPTED** in its entirety; and it is further

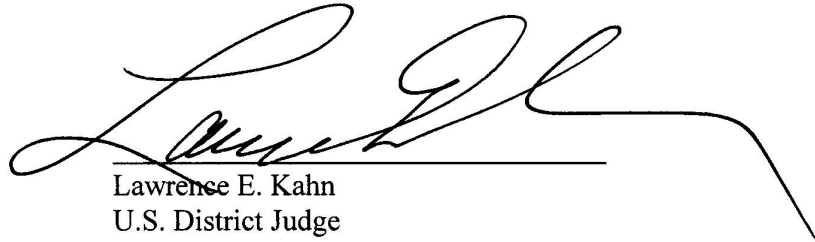
ORDERED, that Defendant’s Motion for Summary Judgement is **DENIED**; and it is further

ORDERED, that the matter is referred to the Magistrate to schedule an exhaustion hearing; and it is further

ORDERED, that the Clerk of the Court shall serve a copy of this Decision and Order on all parties in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: December 06, 2021
Albany, New York



Lawrence E. Kahn
U.S. District Judge