

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

---

NICHOLAS DAYTER,

Plaintiff,

9:20-CV-1151  
(GTS/DJS)

v.

EMILY KALLAY; OFFICER MICHAEL KING;  
OFFICER FULLER; OFFICER BENJAMIN  
FREEMAN; SGT. RAYMOND HOWARD;  
SGT. SHORTS; OFFICER MEYERS;  
OFFICER JERIMIAH JOHNSON;  
OFFICER ZACHARY KNOBLOCH;  
CODY DILLON; and ZACHARY BURKE,

Defendants.

---

APPEARANCES:

OF COUNSEL:

NICHOLAS DAYTER  
Plaintiff, *Pro Se*  
1019 Dean Street  
Schenectady, New York 12309

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

MATTHEW GALLAGHER, ESQ.  
Assistant Attorney General

GLENN T. SUDDABY, United States District Judge

**DECISION and ORDER**

Currently before the Court, in this *pro se* prisoner civil rights action filed by Nicholas Dayter (“Plaintiff”) against the above-captioned correctional employees (“Defendants”), are (1) Defendants’ motion to dismiss for failure to prosecute, and (2) United States Magistrate Judge Daniel J. Stewart’s Report-Recommendation recommending that Defendants’ motion be granted

and Plaintiff's Complaint be dismissed. (Dkt. Nos. 37, 28.) No party has filed an objection to the Report-Recommendation and the deadline in which to do so has expired. (*See generally* Docket Sheet.)

After carefully reviewing the relevant filings in this action, the Court finds no error in the Report-Recommendation, clear or otherwise:<sup>1</sup> Magistrate Judge Stewart employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Court accepts and adopts the Report-Recommendation for the reasons stated therein, Defendants' motion to dismiss is granted, and Plaintiff's Complaint is dismissed.

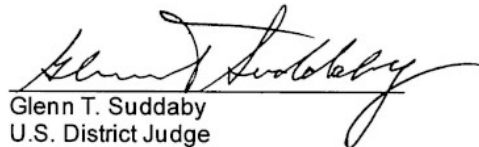
**ACCORDINGLY**, it is

**ORDERED** that Magistrate Judge Stewart's Report-Recommendation (Dkt. No. 38) is **ACCEPTED** and **ADOPTED**; and it is further

**ORDERED** that Defendants' motion to dismiss (Dkt. No. 37) is **GRANTED**; and it is further

**ORDERED** that Plaintiff's Complaint (Dkt. No. 1) is **DISMISSED**.

Dated: November 29, 2022  
Syracuse, New York

  
Glenn T. Suddaby  
U.S. District Judge

---

<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).