

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

KENNETH HALL,

Plaintiff,

v.

**9:21-CV-502
(TJM/ML)**

**C.O. NICHOLS, and
C.O. BELL,**

Defendants.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

Plaintiff filed this action pursuant to 42 U.S.C. § 1983, alleging that Defendants, New York State Correction Officers tasked with transporting Plaintiff and other inmates via bus, violated his constitutional rights by failing to protect him from injuries he sustained when another inmate attacked Plaintiff on that bus. The Court referred the matter to the Hon. Miroslav Lovric, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

The Report-Recommendation, dated April 25, 2022, recommends that the Court grant Defendants' motion to dismiss for failure to prosecute. See dkt. # 36. Judge Lovric finds that Plaintiff failed to update the Court with his current address after his release from prison. Mail the Court sent Plaintiff had been returned as undeliverable, even after the Court had previously warned Plaintiff that his case could be dismissed for failure to

prosecute if he did not keep the Court aware of his current address.

Plaintiff filed objections to the Report-Recommendation. See dkt. # 39. When a party objects to a magistrate judge's Report-Recommendation, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

Having reviewed the record *de novo* and having considered the issues raised in Plaintiff's objections, the Court will sustain the objections and decline to adopt the recommendation of Judge Lovric. Plaintiff's objections were not filed timely, but the Court will construe them as if they had contained a motion for an extension of time to file objections and grant that motion. Plaintiff claims that he did not receive legal mail while incarcerated and thus failed to update his address after release. He was not aware of progress of his case. He states a desire to continue the matter.¹ He has provided the Court with an update on his address. The Second Circuit Court of Appeals "has expressed on numerous occasions its preference that litigation disputes be resolved on the merits" and that "dismissal is a harsh remedy to be utilized only in extreme situations." Cody v. Mella, 59 F.3d 13, 15 (2d Cir. 1995) (quoting Colon v. Mack, 56 F.3d 5 (2d Cir. 1995) (internal quotations omitted)). With that understanding, the Court will not dismiss

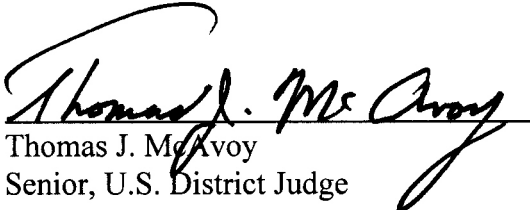
¹Plaintiff's objections contain a request for appointment of counsel. The Court will deny that request with leave to renew at an appropriate time. Plaintiff has to this point demonstrated that he has the understanding and skills to litigate this matter.

the action but will instead allow the case to proceed on the merits.

It is therefore ORDERED that Plaintiff's objections to the Report-Recommendation of Magistrate Judge Lovirc, dkt. # 39, are hereby SUSTAINED. The Court declines to accept and adopt the Report-Recommendation, dkt. # 36. Defendants' motion to dismiss for failure to prosecute, dkt. # 32, is hereby DENIED.

IT IS SO ORDERED.

Dated: September 29, 2022


Thomas J. McAvoy
Senior, U.S. District Judge