UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KAREEM HAMILTON, Plaintiff, -v- DEPUTY WARDEN; DEPTY WARDEN OF SECURITY; JOSEPH PONTE; C.O. MILLER #8331; C.O. DAVIDSON #12593; CAPT. MONROE; and CAPT. SAINT-FLEUR #106, Defendants.	15-cv-4031 (KBF) MEMORANDUM OPINION & ORDER
KAREEM HAMILTON, Plaintiff, -v- JOSEPH PONTE; DEPUTY WARDEN HAYES; DEPTY WARDEN KELLY; DEPUTY WARDEN DUNBAR; DEPUTY WARDEN PRESSLEY; CHIEF CANTY; and ASSISTANT CHIEF KENNETH STUKES, Defendants.	15-cv-9458 (KBF)

KATHERINE B. FORREST, District Judge:

Before the Court is defendant Joseph Ponte's motion for summary judgment on plaintiff's claims for injunctive relief under the First and Fifth Amendments. (ECF No. 36.) Plaintiff has also requested appointment of counsel. (ECF No. 46.) For the following reasons, the Court GRANTS defendant's motion as unopposed and DENIES plaintiff's request for appointment of counsel.

Plaintiff commenced this action on May 15, 2015. (ECF No. 2.) On October 13, 2016, the Court granted defendants' motion to dismiss plaintiff's claims for monetary damages and his claim for injunctive relief under the Eighth Amendment, but denied defendants' motion to dismiss plaintiff's constitutional due process and religious liberty claims against defendant Ponte for injunctive relief related to plaintiff's Enhanced Supervision Housing ("ESH") assignment. Hamilton v. Deputy Warden, No. 15-cv-4031, 2016 WL 6068196 (S.D.N.Y. Oct. 13, 2016). In its Opinion & Order, the Court directed defendant Ponte to move for summary judgment on these remaining claims if plaintiff "[were] no longer in ESH." Id. at *10.

Defendant so moved on November 18, 2016. (ECF No. 36.) The Court provided plaintiff thirty days to oppose. (ECF No. 42.) After the deadline for plaintiff's opposition passed, the Court granted plaintiff's request for an extension by another month, to January 23, 2017. (ECF No. 44.) The Court subsequently granted plaintiff's second request for an extension, providing him until February 27, 2017, to oppose. (ECF No. 45.)

As of March 9, 2017, plaintiff has neither opposed the motion nor requested a third extension. Instead of opposing defendant's motion, on February 27, 2017, plaintiff requested appointment of counsel. The Court cannot construe this filing as an opposition to defendant's motion under even the most charitable reading. See Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474 (2d Cir. 2006) ("It is well established that the submissions of a pro se litigant must be construed liberally and interpreted 'to raise the strongest arguments that they suggest.'" (quoting Pabon v. Wright, 459 F.3d 241, 248 (2d Cir. 2006)) (emphasis in original)). Because there is no dispute of defendant's factual allegations that plaintiff (1) has been returned to

general population from ESH and (2) has access to Muslim religious services, the Court concludes that plaintiff's remaining claims for injunctive relief are moot and, therefore, GRANTS defendant's motion for summary judgment. (See Defendant's Rule 56.1 Statement of Material Facts ¶¶ 3-5, ECF No. 37.)

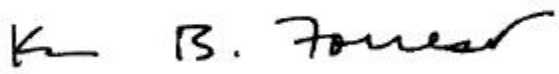
Plaintiff's letter at ECF No. 46 requests appointment of counsel to pursue claims that the Court did not find cognizable in its October 13, 2016, Opinion because plaintiff had raised them for the first time in his opposition to defendants' motion to dismiss. See Hamilton, 2016 WL 6068196 at *3 n.3. These claims are unrelated to the claims before the Court on this motion. Plaintiff's request for counsel is therefore DENIED. Should plaintiff file a separate action with these claims, a request for appointment of counsel could be filed in such an action.

The Court hereby GRANTS defendant's motion for summary judgment as unopposed and DENIES plaintiff's request for appointment of counsel.

The Clerk of Court is directed to terminate the motions at ECF Nos. 36 and 46 and to terminate this action.

SO ORDERED.

Dated: New York, New York
March 9, 2017



KATHERINE B. FORREST
United States District Judge

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