

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RODNEY FERRER,

Plaintiff,

v.

SUPERINTENDENT ORANGE COUNTY
JAIL, CORRECTION OFFICER JOHN DOE
#1, CORRECTION OFFICER JOHN DOE #2,
SERGEANT ROTHMAN, CORRECTION
OFFICER EMERSON,

Defendants.

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DOC #: _____
DATE FILED: _____

08 Civ. 6527 (SCR) (PED)

MEMORANDUM ORDER
ADOPTING REPORT AND
RECOMMENDATION

STEPHEN C. ROBINSON, United States District Judge:

Rodney Ferrer (“Plaintiff”), proceeding *pro se*, brought this action against the Superintendent of the Orange County Correctional Facility (“Defendant Superintendent”), two unidentified John Doe correctional officers (“the John Doe Defendants”), Sergeant Rothman, and Correction Officer Emerson. Plaintiff alleges violations of 42 U.S.C. § 1983, stemming from an alleged assault against Plaintiff while he was imprisoned at the Orange County Correctional Facility. Defendant Superintendent¹ and the John Doe Defendants filed a motion to dismiss the claims against them. Defendant Superintendent seeks dismissal pursuant to Federal Rules of Civil Procedure 12(b)(5), 12(b)(6), and 4(m). The John Doe Defendants seek dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6).

This Court referred the motion to Magistrate Judge Paul E. Davison to issue a Report and Recommendation. Judge Davison issued the Report and Recommendation on December 4, 2009, recommending that this Court dismiss, with prejudice, Plaintiff’s claims against Defendant

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¹ In the motion to dismiss, Defendants note that “there is no person with the title of Superintendent at the Orange County Jail,” but identify Mr. Dominick Orsino, the Correctional Administrator, as the person who “hold[s] the responsibility of supervising and overseeing the jail operation.” See Def. Mem. of Law at pp. 2-3, Exh. C at ¶ 2.

Superintendent and the John Doe Defendants. As Judge Davison explicitly noted at the end of the Report and Recommendation, under 28 U.S.C. § 636(b)(1) and Rules 72(b) and 6(d) of the Federal Rules of Civil Procedure, the parties had a right to file written objections to the Report and Recommendation within seventeen days from December 4, 2009. On December 14, 2009, Judge Davison extended the time for the parties to respond to January 4, 2010. None of the parties have filed Objections to the Report and Recommendation.

For the reasons set forth below, this Court adopts Judge Davison's Report and Recommendation in its entirety and dismisses Plaintiff's claims against Defendant Superintendent and the John Doe Defendants.

I. STANDARD OF REVIEW

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C § 636(b)(1). To accept a Report and Recommendation to which no timely, actionable objection has been made, a district court need only satisfy itself that "there is no clear error on the face of the record." *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985) (citations omitted); *accord Edwards v. Fischer*, 414 F.Supp.2d 342, 346-47 (S.D.N.Y. 2006); *see also Pizarro v. Bartlett*, 776 F. Supp. 815, 817 (S.D.N.Y. 1991) (court may accept report if it is "not facially erroneous"). When specific objections are made, "[t]he district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to." FED. R. CIV. P. 72(b)(3); *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). "[O]bjections to a Report and Recommendation are to be specific and are to address only those portions of the proposed findings to which the party objects." *Kirk v. Burge*, No. 07 Civ. 7467, 2009 WL 438054, at *1 (S.D.N.Y. Aug. 6, 2009). "However, when a party makes only conclusory or

general objections, or simply reiterates his original arguments, the Court reviews the Report and Recommendation only for clear error.” *Renelique v. Doe*, No. 99 Civ. 10425, 2003 WL 23023771, at *1 (S.D.N.Y. Dec. 29, 2003) (collecting cases). Further, district courts “generally should not entertain new grounds for relief or additional legal arguments not presented to the magistrate.” See *Ortiz v. Barkley*, 558 F.Supp.2d 444, 451 (S.D.N.Y. 2008) (collecting cases).

II. DISCUSSION

Since none of the parties have submitted objections, this Court has reviewed Judge Davison’s Report and Recommendation for clear error only and has determined that there is no clear error on the face of the record.

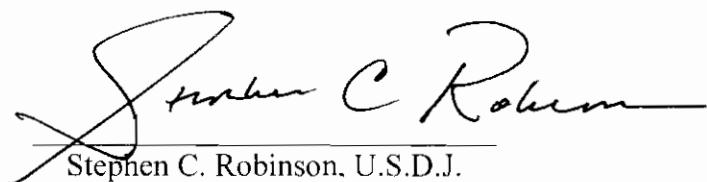
III. CONCLUSION

This Court has reviewed Judge Davison’s thorough and well-reasoned Report and Recommendation and adopts Judge Davison’s findings in their entirety. Accordingly, Plaintiff’s claims against Defendant Superintendent are dismissed with prejudice, pursuant to Federal Rule of Civil Procedure 12(b)(5), and Plaintiff’s claims against the John Doe Defendants are dismissed with prejudice, pursuant to Federal Rule of Civil Procedure 12(b)(6). The Clerk of the Court is directed to terminate docket entry #7.

It is so ordered.

Dated: White Plains, New York

January 26, 2010


Stephen C. Robinson, U.S.D.J.