

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HOWARD AYERS,

Plaintiff,

v.

12-CV-656
DECISION & ORDER

J. ESGROW, *Hearing Officer (CHO)*, L.
FRIOT, *SCC*, D. VENETTOZZI, *Acting
Director (SHU)*, and A. PRACK, *Director
Special Housing Unit*,

Defendants.

On July 12, 2012, the plaintiff commenced this action. Docket Item 1. After Hon. Richard C. Arcara granted the defendants' motion to dismiss two of the plaintiff's three claims, Docket Item 32, Ayers amended his complaint on February 6, 2015, Docket Item 34. On March 7, 2016, this matter was transferred to the undersigned. On March 2, 2017, this Court granted the defendants' motion for summary judgment in part, dismissing all claims except the First Amendment claim against defendant Lawrence Friot. Docket Item 82. The Court re-referred the matter to United States Magistrate Judge Leslie G. Foschio for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). *Id.*

On September 10, 2018, Friot moved for summary judgment, Docket Item 125; on December 14, 2018, Ayers responded, Docket Item 133; and on January 4, 2019, Friot replied, Docket Item 134. On June 12, 2020, Judge Foschio issued a Report and Recommendation ("R&R") finding that Friot's motion should be granted. Docket Item 136. The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court must review *de novo* those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Foshio's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge Foshio's recommendation to grant the defendant's motion for summary judgment because the plaintiff failed to timely exhaust his administrative remedies, see Docket Item 136 at 13-19.

For the reasons stated above and in the R&R, Friot's motion for summary judgment, Docket Item 125, is GRANTED; the complaint, Docket Items 1 and 34, is dismissed; and the Clerk of the Court shall close the file.

SO ORDERED.

Dated: July 10, 2020
Buffalo, New York

/s/ Hon. Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE