

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DAVID A. BROWN,

Plaintiff,

DECISION AND ORDER

09-CV-6228L

v.

KATHLEEN HABBERFIELD,  
et al.,

Defendants.

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Plaintiff David Brown, appearing *pro se*, commenced this action under 42 U.S.C. § 1983. Plaintiff, who is currently confined at the Ontario County Jail in Canandaigua, New York, asserts a variety of claims against eight individual defendants, arising out of his arrest, prosecution and alleged acquittal between April 2008 and January 2009.

Plaintiff has filed a motion for summary judgment. That motion is denied. Discovery is currently ongoing in this case, and plaintiff's motion is based on little more than the complaint. The Court could not grant summary judgment for plaintiff without resolving factual issues in his favor, which is impermissible. *See Goldberg & Connolly v. New York Community Bancorp, Inc.*, 565 F.3d 66, 71 (2d Cir. 2009). On the record before me, and in the present posture of this case, plaintiff's motion is plainly premature, and must be denied.

Plaintiff has also moved for appointment of counsel. Having considered the relevant factors, *see Hendricks v. Coughlin*, 114 F.3d 390, 392 (2d Cir. 1997); *Hodge v. Police Officers*, 802 F.2d 58 (2d Cir. 1986), the Court declines to appoint counsel at this time.

### CONCLUSION

Plaintiff's motion for summary judgment (Dkt. #13) is denied.

Plaintiff's motion for appointment of counsel (Dkt. #11) is denied. It is plaintiff's responsibility to retain an attorney or press forward with this lawsuit *pro se*. 28 U.S.C. § 1654.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", written in a cursive style. The signature is positioned above a horizontal line.

DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
February 18, 2010.