

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANDREW J. MURRAY,

Plaintiff,

Case # 19-CV-6453-FPG

v.

DECISION AND ORDER

TROOPER C.A. TORPEY,

Defendant.

On June 21, 2019, *pro se* Plaintiff Andrew J. Murray brought this case against Defendants State of New York and Trooper C.A. Torpey, for alleged violations of his constitutional rights during a traffic stop. ECF No. 1. The Court referred this case to United States Magistrate Judge Marian W. Payson for all pretrial matters excluding dispositive motions. ECF No. 24.

On October 26, 2020, Judge Payson issued a report and recommendation (“R&R”) in which she recommends that the Court dismiss this case due to Plaintiff’s failure to prosecute. ECF No. 36. Judge Payson indicated that Plaintiff had 14 days after he received the R&R to file objections to it or request an extension of time to do so. *Id.* at 7. Despite this directive, Plaintiff has not filed anything or otherwise communicated with the Court. As noted in Judge Payson’s R&R, Plaintiff has (1) not communicated with the Court since he filed a motion for appointment of counsel in April 2020; (2) failed to appear for the court-ordered Rule 16 conference; and (3) repeatedly failed to keep the Court apprised of his mailing address, despite the issuance of an order warning him that his failure to do so would result in dismissal of the action. ECF No. 36 at 5.

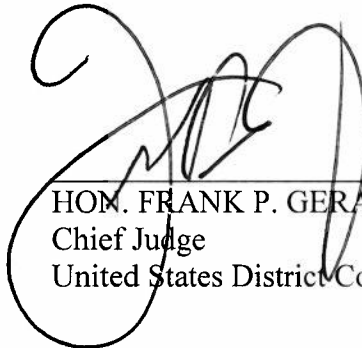
Generally, a court reviews portions of an R&R to which a party makes specific objections *de novo*. Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1)(C). When a party does not object to the R&R, however, the court will review it for clear error. *EEOC v. AZ Metro Distributors, LLC*, 272 F. Supp. 3d 336, 339 (E.D.N.Y. 2017) (quoting *Dafeng Hengwei Textile Co. v. Aceco Indus. &*

Commercial Corp., 54 F. Supp. 3d 279, 283 (E.D.N.Y. 2014)). “When performing such a ‘clear error’ review, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Boice v. M+W U.S., Inc.*, 130 F. Supp. 3d 677, 686 (N.D.N.Y. 2015) (internal quotation marks omitted). After conducting the appropriate review, the 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)(C).

The Court reviewed Judge Payson’s R&R and finds no clear error and therefore accepts and adopts the R&R in its entirety. This action is dismissed for Plaintiff’s failure to prosecute and the Clerk of Court will close this case.

IT IS SO ORDERED.

Dated: February 18, 2021
Rochester, New York



HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court