

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DARYLL MILLER,)	
)	
Plaintiff,)	
)	Civil Action No. 11-189 Erie
v.)	
)	
SUPERINTENDENT DEBRA K.)	
SAUERS, et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

This civil rights action was received by the Clerk of Court on September 2, 2011, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge’s Report and Recommendation [ECF No. 56], filed on July 24, 2012, recommended that the motion to dismiss filed by Defendants Sauers, Quick, Jones, Jane Doe and John Doe, Costanzo, Culver, and Averal [ECF No. 17] be granted in part and denied in part. Specifically, it was recommended that the motion to dismiss be granted in regards to the claims sounding in state tort law, “hate crime,” “false reports,” and “failure to report,” and denied in all other respects. Additionally, it was noted that because they were not a part of the motion to dismiss, the excessive force claim against Defendants Speer, Costanzo, and Culver, and the Fourteenth Amendment due process claim remain pending.

It was further recommended that the motion to dismiss filed by Defendant Simons [ECF No. 29] be denied.

It was further recommended that motion to dismiss filed by Defendant Moll [ECF No. 52] be granted due to Plaintiff's acknowledgement that he failed to exhaust his administrative remedies against this Defendant.

Finally, it was recommended that Plaintiff be allowed to file a Second Amended Complaint within twenty (20) days following this Court's Order on the Report and Recommendation.

The parties were allowed fourteen (14) days from the date of service to file objections and no objections were filed. After de novo review of the documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 13th day of August, 2012;

IT IS HEREBY ORDERED that the motion to dismiss filed by Defendants Sauers, Quick, Jones, Jane Doe and John Doe, Costanzo, Culver, and Averal [ECF No. 17] is GRANTED in part and DENIED in part. Specifically, the motion is GRANTED with respect to the claims sounding in state tort law, "hate crime," "false reports," and "failure to report." The motion is DENIED in all other respects. The excessive force claim against Defendants Speer, Costanzo, and Culver, and the Fourteenth Amendment due process claim remain pending.

IT IS FURTHER ORDERED that the motion to dismiss filed by Defendant Simons [ECF No. 29] is DENIED.

IT IS FURTHER ORDERED that motion to dismiss filed by Defendant Moll [ECF No. 52] is GRANTED due to Plaintiff's acknowledgement that he failed to exhaust his administrative remedies against this Defendant. The Clerk of Courts is directed to terminate Defendant Moll as a party to this action.

IT IS FURTHER ORDERED that Plaintiff may file a Second Amended Complaint within twenty (20) days from the date of this Memorandum Order.

The Report and Recommendation [ECF No. 56] of Magistrate Judge Baxter, filed on July 24, 2012, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge