

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT
3

4 SUMMARY ORDER
5

6 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL
7 REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO
8 THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION
9 OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE,
10 IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL
11 ESTOPPEL OR RES JUDICATA.
12

13 At a stated term of the United States Court of Appeals for the Second Circuit,
14 held at the United States Courthouse, Foley Square, in the City of New York, on the 6th
15 day of October Two thousand four.
16

17 PRESENT:

18 ROGER J. MINER
19 JOSÉ A. CABRANES
20 CHESTER J. STRAUB
21 *Circuit Judges*

22 -----x
23
24 ILUMINADO MARRERO

25
26 *Plaintiff-Appellant,*

27
28 -v.-

No. 98-2904

29
30 DONNA WHITTAKER, Correctional Officer at
31 Chenango Correctional Facility, GEORGE RYAN,
32 Correctional Officer at Chenango Correctional
33 Facility, JIM LLOYD, Sergeant at Chenango
34 Correctional Facility, RAYMOND D. OGBORN,
35 Sergeant at Chenango Correctional Facility,
36 GREGORY S. PERKINS, Deputy at Chenango
37 Correctional Facility,
38

39 *Defendants-Appellees.*
40 -----x
41

42 APPEARING FOR APPELLANT: Iluminado Marrero, pro se, Auburn, NY

1
2 **APPEARING FOR APPELLEES:** Wayne L. Benjamin, Deputy Solicitor General,
3 State of New York, Office of the Attorney
4 General, Albany, NY
5
6

7 Appeal from a judgment of the United States District Court for the Northern District
8 of New York (Lawrence E. Kahn, *Judge*).

9
10 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,**
11 **AND DECREED** that the judgment of the District Court is hereby **AFFIRMED**.

12
13 Plaintiff-Appellant appeals from a judgment dismissing his 42 U.S.C. § 1983 action for
14 failure to file an amended complaint.

15 We conclude that the District Court did not abuse its discretion in dismissing the
16 action after plaintiff failed to file an amended complaint in accordance with its June 6, 1998
17 order. Furthermore, we conclude that, construing the unamended complaint in plaintiff's
18 favor, none of his claims are likely to survive a motion to dismiss under Federal Rule of Civil
19 Procedure 12(b)(6).

20 We have considered all of plaintiff's claims on appeal and we hereby **AFFIRM** the
21 judgment of the District Court.

22
23 FOR THE COURT,
24 Roseann B. MacKechnie, Clerk of Court
25

26
27 By _____