

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

JOSEPH HARRIS

NO. 2016 CW 1652

VERSUS

CAPTAIN WILLIE WASHINGTON;
STATE OF LOUISIANA THROUGH
LOUISIANA DEPARTMENT OF
PUBLIC SAFETY AND
CORRECTIONS, ELYAN HUNT
CORRECTIONAL CENTER

MAR 20 2017

In Re: State of Louisiana through the Department of Public Safety and Corrections and Captain Willie Washington, applying for supervisory writs, 18th Judicial District Court, Parish of Iberville, No. 76194.

BEFORE: HIGGINBOTHAM, THERIOT AND CHUTZ, JJ.

WRIT GRANTED. Delictual actions are subject to a liberative prescription of one year. This prescription commences to run from the day injury or damage is sustained. La. Civ. Code art. 3492. However, prescription may be suspended, in which case, the period of suspension is not counted toward accrual of prescription. Prescription commences to run again upon the termination of the period of suspension. La. Civ. Code art. 3472. If an action is commenced in an improper venue, prescription is interrupted only as to a defendant served by process within the prescriptive period. La. Civ. Code art. 3462. In the present matter, plaintiff-respondent, Joseph Harris, an inmate at the Elayn Hunt Correctional Center was allegedly injured on July 28, 2013, and with the assistance of counsel, filed suit in an improper venue on February 24, 2014. Although his one-year prescriptive period was suspended during the pendency of his administrative remedy procedure, that period of suspension ended on January 10, 2014 and his prescriptive period proceeded to toll and finally tolled in December, 2014. As the defendants-relators were not served until February 5, 2016, and plaintiff-respondent cannot point to any other justification for his failure to serve defendants-relators, other than his failure to timely pay the costs associated with his suit, the suit is prescribed. Therefore, we grant the defendants-respondents writ application, reverse the trial court's December 8, 2016 ruling denying the defendants-respondents exception of prescription, and sustain same.

**WRC
TMH
MRT**

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DEPUTY CLERK OF COURT
FOR THE COURT