No. 97
Farrah Donald,
Appellant,
v.
State of New York,
Respondent.

No. 140 SSM 24
Shakira Eanes,
Appellant,
v.
State of New York,
Respondent.

No. 141 SSM 25
Jonathan Orellanes,
Appellant,
v.
State of New York,
Respondent.

No. 142 SSM 26
Ismael Ortiz, Also Known As Jose Rodriguez,
Appellant,
v.
State of New York,
Respondent.

Case No. 97:
Kevin K. McKain, for appellant.
Andrea Oser, for respondent.
Sidney Burch et al.; The Legal Aid Society, Criminal Appeals Bureau and Parole Revocation Defense Unit, amici curiae.

Case No. 140 SSM24:
Robert Dembia, for appellant.

Andrea Oser, for respondent.

Case No. 141 SSM 25:
Robert Dembia, for appellant.
Andrea Oser, for respondent.

Case No. 142 SSM 26:
Robert Dembia, for appellant.
Andrea Oser, for respondent.

SMITH, J.:

Claimants in these four cases were convicted of crimes for which they received determinate sentences. A statute

required that such a sentence include a period of post-release supervision (PRS), but in each claimant's case the sentencing judge failed to pronounce a PRS term. Claimants were nevertheless subjected to PRS, and in three of the four cases were imprisoned for PRS violations. They now seek damages from the State of New York, asserting that they were wrongly made to undergo supervision and confinement. We hold that all of their claims are without merit.

I

Each claimant was convicted of a felony: Farrah Donald of weapon possession, Shakira Eanes of attempted robbery, Jonathan Orellanes of robbery and Ismael Ortiz of assault. Each received a determinate prison term. At the time of their sentences, Penal Law § 70.45 (1) said: "Each determinate sentence also includes, as a part thereof, an additional period of post-release supervision." In claimants' cases, however, as in many others, the sentencing judge pronounced only a term of imprisonment, not a term of PRS, a practice we held to be improper in People v Sparber (10 NY3d 457 [2008]) and Matter of Garner v New York State Dept. of Correctional Servs. (10 NY3d 358 [2008]). Orellanes's case is like that of the Sparber defendants, in that the commitment sheet issued by the sentencing court did include a PRS term, but the other claimants are in the position of the Garner petitioner: the commitment sheets, like the sentences orally pronounced by the judge, omitted all mention

of PRS.

The Department of Correctional Services (DOCS) entered a PRS term for each claimant on its records. Each claimant, upon being released, was informed that he or she was subject to PRS, was given a list of conditions to comply with, and was subjected to supervision by the Division of Parole. All claimants except Ortiz violated one or more of their PRS conditions, and were incarcerated again as a result.

Each claimant filed a claim against the State in the Court of Claims, and in each case the State moved to dismiss. In Donald, the Court of Claims denied the motion to dismiss and granted Donald partial summary judgment (Donald v State of New York, 24 Misc 3d 329 [Ct Cl 2009]); the Court of Claims dismissed the other three cases. The Appellate Division reversed in Donald (Donald v State of New York, 73 AD3d 1465 [4th Dept 2010]) and affirmed in the other cases (Eanes v State of New York, 78 AD3d 1297 [3d Dept 2010]; Orellanes v State of New York, 78 AD3d 1308 [3d Dept 2010]; Ortiz v State of New York, 78 AD3d 1314 [3d Dept 2010]), thus dismissing all claimants' claims. We granted claimants leave to appeal, and now affirm.

II

All claimants assert, in substance, that they are entitled to damages from the State because DOCS, acting without court authority, administratively added PRS to their prison terms. On the face of the claims, it is clear that none of the

claimants may recover.

Orellanes is the easiest case to dispose of, because in that case DOCS did not err; in entering a PRS term on Orellanes's record, DOCS was merely carrying out the mandate of the sentencing court, as recorded by the court clerk in a commitment sheet. The only error in that case was by the sentencing judge, who failed to pronounce the PRS term orally. Any claim against the State based on the judge's error would be barred by judicial immunity (Mosher-Simons v County of Allegany, 99 NY2d 214 [2002]).

The claims of Donald, Eanes and Ortiz require only a bit more discussion. Each of them sues the State for false imprisonment (also known as wrongful confinement), but none has pleaded the essential elements of that tort. Ortiz has not even alleged, and apparently cannot allege, that DOCS's error caused him to be imprisoned or confined. Donald and Eanes clear that hurdle, but fail to allege another element: that their confinement was not privileged (see Broughton v State of New York, 37 NY2d 451, 456 [1975]; Collins v State of New York, 69 AD3d 46 [4th Dept 2009]). "A detention, otherwise unlawful, is privileged where the confinement was by arrest under a valid process issued by a court having jurisdiction" (Davis v City of Syracuse, 66 NY2d 840, 842 [1985] [internal quotation marks and citations omitted]). Neither Donald nor Eanes alleges any defect in the process by which he or she was arrested for violating PRS,

or in the jurisdiction of the court that issued that process.

The claims of Donald, Eanes and Ortiz may also be read as asserting that the State is liable for DOCS's alleged negligence in subjecting these claimants to unauthorized PRS terms. To establish such liability, claimants would have to show what every tort plaintiff must show: a duty owed to the claimant, a breach of that duty, and injury resulting from the breach. Issues exist as to each of these three elements, but we do not reach any of those issues, because the negligence claims are barred for another reason: the State is immune from liability for the discretionary acts of its officials (Tango v Tulevech, 61 NY2d 34, 40 [1983] ["when official action involves the exercise of discretion, the officer is not liable for the injurious consequences of that action even if resulting from negligence or malice"]; Lauer v City of New York, 95 NY2d 95, 99 [2000] ["A public employee's discretionary acts . . . may not result in the municipality's liability even when the conduct is negligent"]; McLean v City of New York, 12 NY3d 194, 203 [2009] ["Government action, if discretionary, may not be a basis for liability"]).

Where the issue is governmental immunity, an action is considered "discretionary" if it involves "the exercise of reasoned judgment" (Lauer, 95 NY2d at 99). DOCS's actions in recording PRS terms as part of claimants' sentences were discretionary in that sense. In each of these cases, DOCS was

presented with a prisoner sentenced to a determinate prison term, for whom PRS was mandatory under State law. DOCS made the "reasoned judgment" that it should interpret their sentences as including PRS, though the sentences rendered by the courts did not mention it. We held in Garner that that judgment was mistaken, but it clearly was just that -- a mistake in judgment -- not a ministerial error, like mis-transcribing an entry or confusing the files of two different prisoners.

Making judgments as to the scope of its own authority in interpreting the directions it has received from the court system is a normal and legitimate part of DOCS's function. We implicitly recognized this in Garner, where we observed that administratively adding a PRS term was an act "in excess of DOCS's jurisdiction" (10 NY3d at 362 [emphasis added]). We did not suggest that DOCS was without any jurisdiction to make judgments of this kind. Because DOCS was exercising -- albeit mistakenly -- the discretion given it by law, its acts cannot be a basis for State liability.

Accordingly, the order of the Appellate Division in each case should be affirmed, with costs.

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For Case No. 97: Order affirmed, with costs. Opinion by Judge Smith. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Pigott and Jones concur.

For SSM Nos. 24, 25 and 26: On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs. Opinion by Judge Smith. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Pigott and Jones concur.

Decided June 23, 2011