

Williams v State of New York
2016 NY Slip Op 33159(U)
November 16, 2016
Court of Claims
Docket Number: Claim No. XXXXX
Judge: Christopher J. McCarthy
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Synopsis

Movant's motion to serve and file a Claim late pursuant to CCA § 10(6) granted.

Case information

UID: 2016-040-100
Claimant(s): TYRELL WILLIAMS
Claimant short name: WILLIAMS
Footnote (claimant name) :
Defendant(s): THE STATE OF NEW YORK
Footnote (defendant name) :
Third-party claimant(s):
Third-party defendant(s):
Claim number(s): NONE
Motion number(s): M-88887
Cross-motion number(s):
Judge: CHRISTOPHER J. McCARTHY
Claimant's attorney: PRISONERS' LEGAL SERVICES OF NEW YORK
By: Alissa R. Hull, Esq.
ERIC T. SCHNEIDERMAN
Defendant's attorney: Attorney General of the State of New York
By: Thomas Trace, Esq., Senior Attorney
Third-party defendant's attorney:
Signature date: November 16, 2016
City: Albany
Comments:
Official citation:
Appellate results:
See also (multcaptioned case)

Decision

For the reasons set forth below, the application of Movant, Tyrell Williams, to serve and file a late Claim pursuant to Court of Claims Act § 10(6) is granted.

The proposed Claim, attached to the motion papers, alleges that Movant was incarcerated at Riverview Correctional Facility and received a Misbehavior Report on April 7, 2014 charging him with violating seven institutional rules (violent conduct, assault on staff, weapon, altered item, creating a disturbance, interference and refusing a direct order) on April 5, 2014 (proposed Claim, ¶¶ 5, 7 and Ex. A attached).

On March 19, 2015, a Tier III Superintendent's rehearing (the fourth hearing) based on the above charges was commenced at Upstate Correctional Facility before a hearing officer and concluded on May 7, 2015, when the hearing officer found Movant not guilty of the altered item and weapon charges and guilty of charges of violent conduct, creating a disturbance, assault on staff, interference, and refusing a direct order (*id.*, ¶¶ 6, 8, 9 & Exs. B, C). The penalty imposed, *inter alia*, was 24 months in the Special Housing Unit (hereinafter, "SHU") (*id.*, ¶ 10 & Ex. C). Movant submitted an administrative appeal to the Commissioner's office on May 7, 2015. On June 26, 2015, Donald Venettozzi, the Director of Special Housing/Inmate Disciplinary Program affirmed the sanctions and disposition (*id.*, ¶¶ 11, 12 & Ex. E).

At the fourth hearing, Movant requested that inmate witness, Mr. Bell, testify on his behalf. Movant explained that Mr. Bell was the only one who could testify and corroborate that the Officer he allegedly assaulted had injured himself by falling onto Mr. Bell's locker. Mr. Bell refused to testify at the hearing, stating, on an inmate witness refusal form, "I do not wish to testify" (*id.*, ¶¶ 23-26 & Ex. G).

Inmate Bell testified at Movant's previous three hearings and stated, in the second and third hearings, in sum and substance, that he was extremely reluctant to testify again due to retaliation and threats made against him by officers regarding this incident (*id.*, ¶ 27).

The hearing officer at the fourth hearing did not conduct a personal interview of Mr. Bell to inquire into why he longer wished to testify. He asked a sergeant at the facility where Mr. Bell was incarcerated why he did not want to testify. The sergeant stated, in sum and substance, that Bell did not give a reason for refusing to testify, and that the sergeant had not personally threatened Bell with retaliation. There was no testimony as to whether any inquiry was made by the sergeant into whether there were any threats or coercion by other prison staff (*id.*, ¶¶ 27-30).

Movant commenced a CPLR Article 78 proceeding in Supreme Court, Franklin County under Index No. 2015-810 on October 27, 2015 challenging his fourth hearing determination (*id.*, ¶ 32). In its Decision and Judgment, dated March 31, 2016, the Supreme Court found that Movant's fundamental right to call witnesses was violated at his fourth hearing. That court reversed the hearing disposition and ordered the matter expunged (*id.*, ¶¶ 34, 35 & Ex. H).

Movant asserts he was wrongfully confined in SHU during the pendency of his rehearings, from approximately June 18, 2014 (the date of the administrative reversal of Movant's first hearing) until September 4, 2015 (when Movant was released from SHU). He also asserts that, when a superintendent's hearing is administratively reversed, the inmate is to be released from SHU (*see Minieri v State of New York*, 204 AD2d 982 [4th Dept 1994]; *Hernandez v State of New York*, 48 Misc 3d 218, 220 [Ct Cl 2015]). Movant further asserts that his confinement during the pendency of his rehearings was not privileged under *Arteaga v State of New York* (72 NY2d 212 [1988]) because it was not authorized by statute or regulation, nor was such confinement quasi-judicial in nature (*id.*, ¶¶ 66-68).

Movant further asserts that DOCCS' regulations require that any SHU confinement must be according to 7 NYCRR 251-1.6(a) and (d), 7 NYCRR 251-2.2(e), or 7 NYCRR 301.3(a). 7 NYCRR 251-1.6(a) authorizes "confine[ment] to [an inmate's] cell or room or housing area" upon the authorization of an officer, but it does not authorize confinement to SHU. 7 NYCRR 251-1.6(d) authorizes confinement in SHU only if ordered by a superintendent or officer in charge of the facility. Movant alleges that his confinement in SHU during his rehearings was not authorized or ordered by a superintendent or officer in charge of the facility (*id.*, ¶¶ 69-72).

Pursuant to Court of Claims Act § 10(6), it is within the Court's discretion to allow the filing of a late claim if the applicable statute of limitations set forth in Article 2 of the CPLR has not expired. Thus, the first issue for determination upon any late claim motion is whether the application is timely. As stated by the Appellate Division, Third Department in *Kairis v State* (113 AD3d 942 [2014]):

The applicable statute of limitations for a claim of excessive confinement in the prison disciplinary context depends on whether the claim is predicated on intentional or negligent conduct (*see* Court of Claims Act § 10[3], [3-b]; *Ramirez v State of New York*, 171 Misc 2d 677, 680-682 [Ct Cl] [1997]; *cf. Vasquez v State of New York*, 23 Misc 3d 1101[A] [Ct Cl] [2009], *aff'd* 77 AD3d 1229 [2010]). Such a claim accrues "upon a claimant's release from confinement" (*Davis v State of New York*, 89 AD3d 1287, 1287 [3d Dept] [2011]).

An intentional tort has a one-year statute of limitations (CPLR 215[3]), while negligence has a three-year statute of limitations (CPLR 214[5]). As the cause of action accrued on the date Movant was released from SHU, September 4, 2015, and this Motion was served on July 1, 2016 (*see* Affirmation of Service of Alissa R. Hull, Esq., dated July 1, 2016)⁽¹⁾ and filed on July 5, 2016, the Motion is timely both if the cause of action is predicated on intentional action, and if it is predicated on negligent conduct.

Next, in determining whether to grant a motion to file a late claim, Court of Claims Act § 10(6) sets forth six factors that should be considered, although other factors deemed relevant also may be taken into account (*Plate v State of New York*, 92 Misc 2d 1033, 1036 [Ct Cl 1978]). Movant need not satisfy every statutory element (*see Bay Terrace Coop. Section IV v New York State Employees' Retirement Sys. Policemen's & Firemen's Retirement Sys.*, 55 NY2d 979, 981 [1982]). However, the burden rests with Movant to persuade the Court to grant his or her

late claim motion (*see Matter of Flannery v State of New York*, 91 Misc 2d 797 [Ct Cl 1977]; *Matter of Santana v New York State Thruway Auth.*, 92 Misc 2d 1 [Ct Cl 1977]).

The first factor to be considered is whether the delay in filing the claim was excusable. In Movant's Memorandum of Law, it is asserted that Movant was not aware of the deadline to file a Notice of Intention, and that he had other logistical barriers. Neither ignorance of the law nor confinement to a correctional facility is an acceptable excuse for failure to timely file a claim (*Matter of Robinson v State of New York*, 35 AD3d 948, 950 [3d Dept 2006]). However, tender of a reasonable excuse for delay in filing a claim is not a precondition to permission to file a late claim such as to constitute a *sine qua non* for the requested relief (*Bay Terrace Coop. Section IV v New York State Employees' Retirement Sys. Policemen's & Firemen's Retirement Sys.*, *supra* at 981).

The next three factors to be addressed - whether Defendant had notice of the essential facts constituting the claim, whether Defendant had an opportunity to investigate the circumstances underlying the claim, and whether the failure to file or serve a timely claim or to serve a notice of intention resulted in substantial prejudice to Defendant - are interrelated and will be considered together. Defendant argues that the notice alleged here in connection with the Article 78 proceeding, which is outside the parameters of the Claim, is inadequate to show there would be litigation in the Court of Claims (Trace Affirmation, ¶ 13). However, Defendant does not argue lack of notice, lack of opportunity to investigate, or that it will be substantially prejudiced by a delay in filing a claim (*see* Trace Affirmation). Those factors, therefore, weigh in Movant's favor.

The fifth factor to be considered is whether Movant has another remedy available. It appears that Movant does not have a possible alternate remedy.

The sixth, final and perhaps most important factor to be considered is whether the proposed Claim has the appearance of merit, for it would be futile to permit a defective claim to be filed, subject to dismissal, even if other factors tended to favor the request (*Ortiz v State of New York*, 78 AD3d 1314, 1314 [3d Dept 2010], *lv granted* 16 NY3d 703 [2011], *affd sub nom. Donald v State of New York*, 17 NY3d 389 [2011], quoting *Savino v State of New York*, 199 AD2d 254, 255 [2d Dept 1993]). It is Movant's burden to show that the claim is not patently groundless, frivolous or legally defective, and, based upon the entire record, including the proposed claim and any affidavits, that there is reasonable cause to believe that a valid cause of action exists. While this standard clearly places a heavier burden upon a party who has filed late than upon one whose claim is timely, it does not, and should not, require Movant to establish definitively the merit of the claim, or overcome all legal objections thereto, before the Court will permit Movant to file a late claim (*Matter of Santana v New York State Thruway Auth.*, *supra* at 11-12).

At this stage of the proceeding, it should be noted the Court generally takes as true factual allegations of Movant. Based upon the entire record, including the proposed Claim, the Court finds that the proposed Claim has the appearance of merit. Movant need only establish the appearance of merit; he need not prove a *prima facie* case at this stage of the proceedings. Movant has established that, in his Article 78 proceeding, the Supreme Court, Franklin County, found that Movant's fundamental right to call a witness was violated at his hearing.

In accordance with the foregoing, the Court finds that the preponderance of factors considered weigh in Movant's favor. The mix of circumstances presented by this case fall well within the remedial purposes of the amendments to the Court of Claims Act enacted in 1976 (L 1976, ch 280), which was designed to vest in the Court of Claims broader discretion than previously existed to permit late filing, indicated a strong concern that litigants with meritorious claims be afforded their day in court (*Calzada v State of New York*, 121 AD2d 988, 989 [1st Dept 1986]; *Plate v State of New York*, *supra* at 1036). Movant has provided ample basis for a favorable exercise of this Court's discretion to grant him leave to file a late claim against the State as set forth above. Therefore, within forty-five (45) days of the date of filing of this Decision and Order, Movant shall file with the Clerk of the Court his proposed Claim, as set forth above and serve a copy of the proposed Claim upon the Attorney General personally or by certified mail, return receipt requested. In serving and filing the Claim, Movant is directed to follow all of the requirements of the Court of Claims Act, including § 11-a, regarding the filing fee, and the Uniform Rules for the Court of Claims.

November 16, 2016

Albany, New York

CHRISTOPHER J. McCARTHY

Judge of the Court of Claims

The following papers were read and considered on Movant's application for permission to file a late claim:

Papers Numbered

Notice of Motion, Affidavit in Support,

Exhibits attached, and Memorandum of Law 1

Affirmation in Opposition 2

Movant's Reply Memorandum of Law

and Exhibit attached 3

1. The Court notes that the Affirmation states that the Motion was served on July 1, **2017**, however, the Court takes this to be a typographical error and that the correct date of mailing was July 1, 2016, the date the Affirmation was completed.

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