

Warren v White

2021 NY Slip Op 32328(U)

November 17, 2021

Supreme Court, New York County

Docket Number: Index No. 101039/2021

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE BLUTH PART 14

Justice

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CAMERON WARREN,

Petitioner,

- v -

DETECTIVE SHELDON WHITE OF BRONX S.V.U., THE
NEW YORK CITY POLICE DEPARTMENT,

Respondents.

-----X

INDEX NO. 101039/2021

MOTION DATE N/A

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 1, 18, 24, 25, 26, 27, 31, 40, 41, 42, 43, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56

were read on this motion to/for ARTICLE 78.

The petition to “mandate that the Respondent (Detective Sheldon White) and the New York City Police Department correctly report, classify and investigate” certain complaints is denied and the cross-motion by respondents to dismiss is granted.

Background

Petitioner complains that he has been the victim of various crimes but insists that respondents have not properly investigated and prosecuted these crimes because the alleged suspect is a family member of a NYPD officer. He contends that respondents attempted to discredit him in an attempt to prevent him from successfully reporting these alleged crimes. Petitioner asks the Court to intervene and require respondents to investigate various officers and his criminal complaints.

Respondents cross-move to dismiss. They claim that the instant action is both procedurally and substantively deficient. Respondents point out that petitioner commenced this case as an Article 78 proceeding rather than as a plenary action so he cannot pursue his claims

for negligence, conspiracy, entrapment, harassment and discrimination. Respondents detail petitioner's interactions with various officers and contend that each officer simply responded to petitioner's complaints and directed him to fill out various reports.

Respondents claim that at one point, petitioner demanded that respondent White question certain individuals as part of an investigation into petitioner's complaints and respondent White observed that he could not force anyone to speak with him. Eventually, respondent White purportedly informed petitioner that the Bronx District Attorney's Office decided not to prosecute anyone based on petitioner's complaints.

Respondents argue that petitioner fails to seek a review of a final agency determination by respondents. They also argue that to the extent petitioner seeks mandamus relief, that demand is improper because respondents' investigation is not ministerial and is instead a discretionary duty. Respondents contend that even if petitioner had commenced a plenary action (as some of his causes of action would require), he did not file a notice of claim as required under applicable laws.

In opposition to the motion to dismiss, petitioner insists that he is not pursuing any state law claims and instead wants the Court to require respondents to "reopen and investigate" his complaints (NYSCEF Doc. No. 47, ¶ 5). Petitioner asserts that this is an Article 78 proceeding to enforce a clear legal duty to be undertaken by respondents.

Discussion

As an initial matter, the Court views the instant proceeding as an Article 78 proceeding. Petitioner insists he is not seeking state law claims so the Court declines to consider whether this proceeding should be converted to a plenary action. The next issue for this Court is what type of Article 78 relief petitioner seeks. Based on the petition and petitioner's submissions, the Court

concludes that petitioner seeks mandamus relief. He does not challenge a final agency determination and instead demands that respondents take certain actions.

“Article 78 is the codification of the common-law writs, including a writ of mandamus to compel. Mandamus to compel is a judicial command to an officer or body to perform a specified ministerial act that is required by law to be performed. It does not lie to enforce a duty that is discretionary. The availability of mandamus to compel the performance of a duty does not depend on the applicant's substantive entitlement to prevail, but on the nature of the duty sought to be commanded—i.e., mandatory, non-discretionary action.

A ministerial act is best described as one that is mandated by some rule, law or other standard and typically involves a compulsory result. Discretionary acts, on the other hand, are not mandated and involve the exercise of reasoned judgment, which could typically produce different acceptable results. Mandamus is not available to compel an officer or body to reach a particular outcome with respect to a decision that turns on the exercise of discretion or judgment. In other words, mandamus will lie to compel a body to perform a mandated duty, not how that duty shall be performed” (*Alliance to End Chickens as Kaporos v New York City Police Dept.*, 152 AD3d 113, 117, 55 NYS3d 31 [1st Dept 2017], *affd* 32 NY3d 1091 [2018] [internal quotations and citations omitted]).

The “acts” that petitioner wants respondents to perform are not ministerial; rather, he wants them to reopen an investigation into his complaints. The decision to investigate and prosecute is an inherently discretionary act. “Mandamus is generally not available to compel government officials to enforce laws and rules or regulatory schemes that plaintiffs claim are not being adequately pursued. This reflects the long-standing public policy prohibiting the courts from instructing public officials on how to act under circumstances in which judgment and

discretion are necessarily required in the fair administration of their duties” (*id.* at 118). This Court cannot direct respondents how to utilize their discretion to investigate or prosecute a particular complaint. Accordingly, this Court will not order respondents to investigate petitioner’s claims any further.

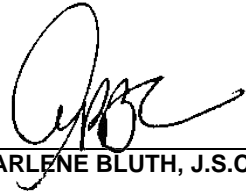
The record in this proceeding shows that respondents did, in fact, conduct an investigation and ultimately the prosecutor’s office decided not to pursue any charges. Petitioner is free to advocate for his view that the investigation should be reopened but this Court cannot tell respondents which cases to pursue and how to conduct their investigations under the auspices of an Article 78 mandamus proceeding. The Court grants the cross-motion to dismiss as petitioner failed to state a cause of action upon which relief can be granted.

To the extent that petitioner seeks to reject the cross-motion as untimely, that assertion is without merit. Respondent was entitled to make a cross-motion within the time to answer, which is five days before the return date (*see* CPLR 7803[c], [f]). In any event, the Court prefers to decide cases on the merits and petitioner was afforded the opportunity to respond to the cross-motion.

Accordingly, it is hereby

ADJUDGED that the cross-motion by respondents to dismiss is granted, the petition is denied and dismissed, and the Clerk is directed to enter judgment accordingly upon presentation of proper papers therefor.

11/17/2021
DATE


ARLENE BLUTH, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE