

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D33858  
G/kmb

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Argued - January 13, 2012

DANIEL D. ANGIOLILLO, J.P.  
THOMAS A. DICKERSON  
LEONARD B. AUSTIN  
JEFFREY A. COHEN, JJ.

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2010-09861

DECISION & ORDER

Ana Iris Chiclana, appellant, v State of New York,  
respondent.

(Claim No. 113408)

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Barton Barton & Plotkin, LLP, New York, N.Y. (Thomas P. Giuffra and Jonathan W. Kelly of counsel), for appellant.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Benjamin N. Gutman and Leslie B. Dubeck of counsel), for respondent.

In a claim to recover damages for personal injuries, the claimant appeals from a judgment of the Court of Claims (Mignano, J.), dated September 8, 2010, which, upon a decision of the same court dated August 13, 2010, made after a nonjury trial on the issue of liability, is in favor of the defendant and against her dismissing the claim.

ORDERED that the judgment is affirmed, without costs or disbursements.

The claimant, an inmate at Bedford Hills Correctional Facility, alleged that the defendant, the State of New York, was negligent and liable for injuries she sustained when she was assaulted by a fellow inmate. Following a nonjury trial on the issue of liability, the Court of Claims determined that the State was not negligent and dismissed the claim. The claimant appeals, and we affirm.

“While the State’s duty to an inmate encompasses protection from the foreseeable risk of harm at the hands of other prisoners, the State is not an insurer of an inmate’s safety” (*Smart v State of New York*, 65 AD3d 1218, 1218 [internal quotation marks and citations omitted]; *see*

*Codrington v State of New York*, 19 AD3d 443, 443). “The State will be liable in negligence for an assault by another inmate only upon a showing that it failed to exercise adequate care to prevent that which was reasonably foreseeable” (*Codrington v State of New York*, 19 AD3d at 444; see *Wilson v State of New York*, 303 AD2d 678, 679). Here, the Court of Claims properly determined that the claimant failed to establish that the State was negligent. Accordingly, the court properly dismissed the claim.

ANGIOLILLO, J.P., DICKERSON, AUSTIN and COHEN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court