

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1493

CA 16-02018

PRESENT: WHALEN, P.J., SMITH, CARNI, TROUTMAN, AND WINSLOW, JJ.

DAVID F. TUSZYNSKI, CLAIMANT-APPELLANT,

V

MEMORANDUM AND ORDER

THE STATE OF NEW YORK, DEFENDANT-RESPONDENT.
(CLAIM NO. 125827.)

DAVID F. TUSZYNSKI, CLAIMANT-APPELLANT PRO SE.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (FREDERICK A. BRODIE OF COUNSEL), FOR DEFENDANT-RESPONDENT.

Appeal from an order of the Court of Claims (Renee Forgens Minarik, J.), entered June 15, 2016. The order granted defendant's motion to dismiss the claim.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Claimant, a pro se inmate, appeals from an order granting defendant's motion to dismiss the claim. We affirm. Inasmuch as claimant served the claim by regular mail, the Court of Claims was deprived of subject matter jurisdiction and thus properly dismissed the claim (*see Zoekler v State of New York*, 109 AD3d 1133, 1133 [4th Dept 2013]; *see generally* Court of Claims Act § 11 [a]). Contrary to claimant's contention, there is no evidence in the record of " 'misfeasance or malfeasance on the part of facility officials' that would warrant an estoppel" (*Butler v State of New York*, 126 AD3d 1247, 1247 [3d Dept 2015]; *cf. Wattley v State of New York*, 146 Misc 2d 968, 969-970 [Ct Cl 1990]).

Entered: December 22, 2017

Mark W. Bennett
Clerk of the Court