

**Sanders v State of New York**

2019 NY Slip Op 34934(U)

September 5, 2019

Court of Claims

Docket Number: Index No. 2019-045-024

Judge: Gina M. Lopez-Summa

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This opinion is uncorrected and not selected for official publication.

## Synopsis

Defendant's motion to dismiss pro se inmate's claim due to service by regular mail, however claimant timely reserved the Claim by certified mail, return receipt requested and thus the claim was not dismissed.

## Case information

UID: 2019-045-024  
Claimant(s): CHARLES SANDERS  
Claimant short name: SANDERS  
Footnote (claimant name) :  
Defendant(s): THE STATE OF NEW YORK  
Footnote (defendant name) :  
Third-party claimant(s):  
Third-party defendant(s):  
Claim number(s): 132221  
Motion number(s): M-93602  
Cross-motion number(s): CM-93603  
Judge: Gina M. Lopez-Summa  
Claimant's attorney: Charles Sanders, Pro Se  
Defendant's attorney: Hon. Letitia James, Attorney General  
By: Jeane L. Strickland Smith, Assistant Attorney General  
Third-party defendant's attorney:  
Signature date: September 5, 2019  
City: Hauppauge  
Comments:  
Official citation:  
Appellate results:  
See also (multcaptioned case)

## Decision

The following papers were read and considered by the Court on these motions: Defendant's Notice of Motion to Dismiss; Defendant's Affirmation in Support with annexed Exhibits A-B; Claimant's Notice of Cross-Motion; Claimant's Affidavit in Support of Cross-Motion and in Opposition to Defendant's Motion to Dismiss with annexed Exhibits A-D.

Defendant, the State of New York, has brought this motion pursuant to Court of Claims Act §§ 10 and 11 seeking an order dismissing the claim. Claimant, Charles Sanders, a pro se inmate, has opposed the motion.

Claimant alleged in his Claim that beginning on April 26, 2018 he was wrongfully confined for 22 days in the Special Housing Unit (SHU) of Fishkill Correctional Facility. Claimant served a Notice of Intention to File a Claim upon defendant on August 16, 2018 by certified mail, return receipt requested. Claimant served his claim upon defendant on October 31, 2018.

Defendant states that the claim must be dismissed as it was sent by regular mail as opposed to certified mail, return receipt requested. In support, defendant submitted a copy of the claim, together with a copy of the envelope evincing postage in the amount of sixty-eight cents. Additionally, claimant's original affidavit of service

sworn to on October 24, 2018 indicates that the claim was served by ordinary mail as part of his application for a reduction in the filing fee.

Court of Claims Act § 11 (a) provides that a copy of the claim ". . . shall be served personally or by certified mail, return receipt requested, upon the attorney general within the times hereinbefore provided for filing with the clerk of the court . . ." The filing and service requirements contained in the Court of Claims Act § 11 are jurisdictional in nature and therefore must be strictly construed (*Finnerty v New York State Thruway Authority*, 75 NY2d 721 [1989]). "The use of ordinary mail to serve the claim upon the Attorney-General is insufficient to acquire jurisdiction over the State" (*Turley v State of New York*, 279 AD2d 819 [3d Dept 2001]).

Typically this would require dismissal of the Claim, however the unique facts of this case lead to a different result.

Claimant points out in his cross motion that on or about January 14, 2019 he re-served the Claim upon defendant by certified mail, return receipt requested as part of his renewed application for a reduction in the filing fee. Claimant provides his affidavit of service which also provides the certified mail, return receipt request number. Claimant was not seeking to amend his claim as defendant argues but has simply re-served his original claim upon defendant by an authorized method of service. Consequently, claimant has timely satisfied the service requirements of Court of Claims Act § 11 (a).

Therefore, for the foregoing reasons, defendant's motion is denied. Claimant's cross motion is granted only to the extent that defendant is directed to serve its Answer in this matter within 40 days of the date this Decision and Order is filed.

September 5, 2019

Hauppauge, New York

Gina M. Lopez-Summa

Judge of the Court of Claims

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