

Pierre v State of New York

2019 NY Slip Op 35083(U)

September 24, 2019

Court of Claims

Docket Number: Claim No. 128883

Judge: Judith A. Hard

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Synopsis

Defendant's motion for summary judgment is partially granted and partially denied. Defendant failed to establish that claimant's incarceration in maximum security correctional facilities past his maximum expiration date was privileged. Summary judgment is granted as to claimant's wrongful confinement claims to the extent claimant challenges his confinement in an RTF.

Case information

UID: 2019-032-053
Claimant(s): LESLIE PIERRE
Claimant short name: PIERRE
Footnote (claimant name) :
Defendant(s): THE STATE OF NEW YORK
Footnote (defendant name) :
Third-party claimant(s):
Third-party defendant(s):
Claim number(s): 128883
Motion number(s): M-93565
Cross-motion number(s):
Judge: JUDITH A. HARD
Claimant's attorney: Conde Glaser LLP
By: Ezra B. Glaser, Esq.
Defendant's attorney: Letitia James, NYS Attorney General
By: Michael T. Krenrich, Esq. Assistant Attorney General
Third-party defendant's attorney:
Signature date: September 24, 2019
City: Albany
Comments:
Official citation:
Appellate results:
See also (mult-captioned case)

Decision

The instant claim seeks monetary damages for injuries arising from an alleged wrongful confinement by the Department of Corrections and Community Supervision (hereinafter DOCCS). Following joinder of issue and the completion of discovery, defendant moves for summary judgment as to the issue of defendant's liability. Claimant has not submitted papers in opposition to the motion⁽¹⁾. **FACTS**

On September 12, 2014, claimant was sentenced to a term of imprisonment of three years with ten years of post-release supervision (PRS) upon his conviction of four counts of rape in the second degree and one count of criminal sexual act in the second degree. On September 22, 2014, claimant was received into DOCCS custody to begin his sentence. At that time, his legal date computations were as follows:

Conditional Release Date: December 19, 2014

Maximum Expiration Date: May 25, 2015

On October 7, 2014, the United States Department of Homeland Security filed an immigration detainer for claimant, who is a Haitian national and not a legal citizen of the United States.

On October 17, 2014, claimant participated in a community preparation interview prior to his release from prison. During this interview, claimant reported that he was homeless. Because claimant's convictions were based on charges that he engaged in sexual intercourse with a minor child, claimant was subject to the school grounds condition of the Sexual Assault Reform Act of 2000 [SARA].⁽²⁾ On December 8, 2014, the New York State Department of Social Services (DSS) reported to DOCCS that it was unable to provide an address for a proposed residence for claimant.

On January 13, 2015, claimant was transferred to the custody of the Immigration and Customs Enforcement (ICE) unit of the Department of Homeland Security. At that time, DOCCS issued a warrant for retaking and reincarcerating claimant, which stated in part:

"If, for any reason, [claimant] is not deported and it appears imminent that [ICE] will release [claimant] from its custody and jurisdiction, it is hereby ORDERED that [claimant] be returned to a correctional facility operated by [DOCCS], where [claimant] shall remain incarcerated for the completion of those review processes required in the State of New York in relation to an offender's conditional release to community supervision. This shall constitute a warrant sufficient for the retaking and continued incarceration of [claimant]" (Krenrich Aff. Exhibit D).

ICE was unable to deport claimant, and on June 23, 2015, claimant was released from ICE custody with no further reporting instructions.

On June 25, 2015, claimant contacted the Suffolk Area Parole Office by telephone and advised Parole Officer Michael Mastronardi of his release. Officer Mastronardi directed claimant to report to the Suffolk Area Parole Office the following morning. However, after reviewing claimant's case file, it was discovered that a valid warrant for claimant's arrest and reincarceration existed, which was confirmed by Parole Operations. Officer Mastronardi then contacted claimant and told him to report to the Nassau County Parole Office as claimant was a resident of Nassau County prior to his incarceration. When claimant reported to the Nassau County Parole Office on June 26, 2015, he was arrested and transported to Sing Sing Correctional Facility.

Claimant was incarcerated at Sing Sing Correctional Facility from June 26-29, 2015 until he was transferred to the Downstate Correctional Facility Reception Center (Downstate), which is an admission point into the DOCCS system for newly incarcerated individuals.

Although claimant was beyond his maximum expiration date when he was arrested on June 26, 2015, he was still subject to PRS. Due to the nature of claimant's conviction and his inability to provide a SARA-compliant address, DOCCS was authorized to place claimant in a residential treatment facility (RTF) pursuant to Correction Law § 73. After completing the intake process at Downstate, claimant was transferred to Fishkill Correctional Facility RTF on July 20, 2015. On December 7, 2015, claimant was released to SARA-compliant housing subject to the conditions of his release to parole supervision.

LAW AND DISCUSSION

"Summary judgment is a drastic remedy that 'should not be granted where there is any doubt as to the existence of [triable] issues [of fact], or where the issue is arguable'" (Hall v Queensbury Union Free Sch. Dist., 147 AD3d 1249, 1250 [3d Dept. 2017], quoting Sillman v Twentieth Century-Fox Film Corp., 3 NY2d 395, 404 [1957]; see Rotuba Extruders v Ceppos, 46 NY2d 223, 231 [1978]; Stukas v Streiter, 83 AD3d 18, 23 [2d Dept. 2011]). The proponent of the motion "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers" (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986] [citations omitted]; see Zuckerman v City of New York, 49 NY2d 557, 562 [1980]; Robinson v Kingston Hosp., 55 AD3d 1121, 1123 [3d Dept. 2008]). "Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (Alvarez v Prospect Hosp., 68 NY2d at 324; see Town of Kirkwood v Ritter, 80 AD3d 944, 945-946 [3d Dept. 2011]). In considering the motions before it, the Court "must view the evidence in a light most

favorable to the nonmoving party and accord that party the benefit of every reasonable inference from the record proof, without making any credibility determinations" (Black v Kohl's Dept. Stores, Inc., 80 AD3d 958, 959 [3d Dept. 2011]; see Winne v Town of Duanesburg, 86 AD3d 779, 780-781 [3d Dept. 2011]).

In order to succeed on his claim of wrongful confinement, "claimant [is] required to show that (1) defendant intended to confine him, (2) he was conscious of the confinement, (3) he did not consent to the confinement, and (4) such confinement was not otherwise privileged" (Cass v State of New York, 134 AD3d 1207, 1208 [3d Dept. 2015], lv dismissed 27 NY3d 972 [2016] [internal quotation marks and citations omitted]; accord Miller v State of New York, 124 AD3d 997, 998 [3d Dept. 2015]). As the first three elements of this cause of action are not disputed, defendant's liability in this case turns upon whether or not its confinement of claimant from June 26, 2015 through December 7, 2015 was privileged.

Here, claimant was arrested on June 26, 2015 pursuant to a warrant issued by DOCCS and signed by an individual with the title "Facility Superintendent" (Krenrich Aff., Exhibit D). The warrant states that claimant would be incarcerated until "the completion of those review processes required in the State of New York in relation to an offender's conditional release to community supervision" (Krenrich Aff., Exhibit D). Claimant spent three days at Sing Sing and was then promptly transferred to Downstate Correctional Facility, where DOCCS could evaluate his "medical and mental health needs, legal date computations, program planning, and security classification to assess which facilities would be appropriate to transfer the individual" (O'Brien Aff. ¶ 18). On July 20, 2015, claimant was transferred to Fishkill RTF.

After claimant's arrest on June 26, 2015, he spent three days at Sing Sing and then 21 days at Downstate before his transfer to Fishkill RTF. Thus, the Court must examine claimant's period of incarceration at the non-RTF correctional facilities separately from his confinement at Fishkill RTF.⁽³⁾

The Court will first address claimant's period of confinement at Sing Sing and Downstate. The Third Department has held that when an inmate reaches his or her maximum expiration date, they must be released either to an approved residence or an RTF, as DOCCS is conclusively bound by the sentence and commitment order issued by the Court upon the inmate's conviction (People ex rel. Green v Supt. of Sullivan Corr. Facility, 137 AD3d 56, 59 [3d Dept. 2016], citing Miller v State of New York, 124 AD3d 997, 999 [3d Dept. 2015]). Here, claimant reached his maximum expiration date on May 25, 2015, therefore DOCCS was required to either release claimant to an approved residence or to an RTF after his arrest on June 26, 2015.

Defendant argues that claimant's incarceration at Sing Sing and Downstate was privileged because the warrant issued by DOCCS upon claimant's transfer to ICE custody authorized his arrest and confinement (Krenrich Aff. Exhibit D). The challenged confinement of an inmate may be privileged where the confinement is "pursuant to a facially valid order issued by a Court with proper jurisdiction directing confinement" (Sanabria v State of New York, 29 Misc 3d 988, 991 [Ct Cl 2010]). The warrant here is not issued by a Court, rather it was issued by DOCCS and signed by someone with the title of "Facility Superintendent" (Krenrich Aff. Exhibit D). Moreover, the so-called warrant appears to authorize an arrest that is in direct contravention of both claimant's Sentence and Commitment Order issued by Supreme Court (Krenrich Aff. Exhibit A) and DOCCS' Legal Date Computation (Krenrich Aff. Exhibit B), which calculate claimant's maximum expiration date as May 25, 2015--one month prior to his arrest. Defendant asserts that claimant was incarcerated so that DOCCS could complete "a number of steps" to determine whether claimant may be released to community supervision (O'Brien Aff. ¶ 15). A similar argument regarding DOCCS' inmate pre-release process was rejected by the Third Department in Green. In that case, DOCCS argued an inmate remained confined in a maximum security facility eight months past his expiration date because he needed mental health treatment that was unavailable at an RTF (Green, supra at 59). The Third Department held that DOCCS lacked the authority to unilaterally determine that claimant remain at the maximum security facility, and instead should have sought a court order to either continue his hospitalization or admit him to a secure treatment facility (id.). The Third Department holding in Green indicates that DOCCS must complete all of its review processes *prior* to an inmate's maximum expiration date (see Green, 137 AD3d at 59 ["... we find that when a risk level III sex offender reaches his or her maximum expiration date, DOCCS *must* release the individual to either an approved residence or to an RTF"] [emphasis added]).

Moreover, it appears that DOCCS' process of arresting a convicted sex offender transferred to ICE custody and then released has been previously addressed in a proceeding pursuant to CPLR Article 70. In People ex rel. Bourlaye T. v Connolly, 25 NY3d 1054 [2015], the petitioner, a convicted sex offender, challenged his incarceration after he was taken into custody and placed in a State correctional facility following his release from ICE detention. The petitioner initiated a proceeding pursuant to CPLR Article 70 seeking a writ of habeas corpus alleging that he was confined unlawfully. On that same day, the State filed a civil management petition pursuant

to Mental Hygiene Law Article 10 and received judicial authorization to temporarily retain the petitioner in custody pending a probable cause hearing as to whether the petitioner was mentally ill (see Correction Law § 404). The Court of Appeals held that the petitioner's challenge to his initial arrest and detention became moot when the State filed the civil management petition, which authorized his continued confinement. The Court of Appeals noted that the State did not defend its procedure for the petitioner's initial return to custody after he was released from ICE detention, but agreed with the State that the issue was "insignificant" as the authorization to confine the petitioner pursuant to Mental Hygiene Law Article 10 provided "an independent and superseding basis for his confinement" (Bourlaye, supra at 1056).⁽⁴⁾ Here, the DOCCS warrant used to incarcerate claimant states that claimant is "Subject to Mandatory Assessment under Article 10 of the N.Y. Mental Hygiene Law" but there is no indication that the State filed a civil management petition pursuant to Article 10. Accordingly, it is arguable whether DOCCS' stated reasoning for arresting and incarcerating sex offenders subject to PRS and released from ICE custody forms an adequate basis to justify the continued confinement of those individuals.

Under the circumstances presented, defendant has failed to meet its burden to establish that it "was acting in an objectively reasonable manner" when it confined claimant (Santos v State of New York, UID No. 2008-038-533 [Ct Cl, DeBow, J., Mar. 30, 2009]). Therefore, defendant's motion for summary judgment on claimant's claim of wrongful confinement from June 26, 2015 through July 19, 2015 is denied.

The Court reaches a different conclusion as to claimant's confinement at Fishkill RTF from July 20, 2015 through December 7, 2015. To the extent that claimant asserts that the State lacked the authority to place him in an RTF after reaching his maximum expiration date, it is well-settled that DOCCS is statutorily authorized to place an inmate in an RTF where the inmate is subject to PRS conditions and cannot provide a SARA-compliant address (see Gonzalez v Annucci, 32 NY3d 461, 467 [2018]; Tuitt v State of New York, UID No. 2017-041-070 [Ct Cl, Milano, J., Oct. 16, 2017]; Johns v State of New York, UID No. 2017-040-083 [Ct Cl, McCarthy, J., July 7, 2017]). Accordingly, defendant's motion for summary judgment on claimant's claim of wrongful confinement from July 20, 2015 to December 7, 2015 is granted.

To the extent claimant argues that Fishkill's designation as an RTF is improper, claimant must challenge such designation in Supreme Court by commencing a proceeding pursuant to CPLR Article 78 (see Gonzalez v Annucci, 32 NY3d at 467; Johns v State of New York, UID No. 2017-040-083 [Ct Cl, McCarthy, J., July 7, 2017]; Aleantara v Annucci, 55 Misc 3d 1216[A], 2017 NY Slip Op 50610[U], *10 [Sup Ct, Albany County 2017]).⁽⁵⁾

With respect to claimant's causes of action under 42 USC § 1983, this Court lacks jurisdiction as the State is not a "person" within the meaning of the statute (Will v Michigan Dept. of State Police, 491 US 58, 66 [1989]; Flemming v State of New York, 120 AD3d 848 [3d Dept. 2014]). To the extent that claimant seeks to allege State constitutional torts, the Court finds that claimant's "constitutional tort allegations may be analogized to existing common-law torts for which there are adequate alternate remedies" (Augat v State of New York, 244 AD2d 835 [3d Dept. 1997], lv denied 91 NY2d 814 [1998]).

Based upon the foregoing, it is hereby

ORDERED that defendant's motion for summary judgment (M-93565) is **GRANTED** as to the wrongful confinement cause of action for claimant's incarceration at Fishkill RTF from July 20, 2015 through December 7, 2015; the challenged to Fishkill's designation as a residential treatment facility; the 42 USC § 1983 claims; and the constitutional claims; and it is further

ORDERED that defendant's motion for summary judgment is **DENIED** as to the wrongful confinement cause of action for claimant's incarceration at Sing Sing and Downstate Correctional Facilities from June 26, 2015 through July 19, 2015.

September 24, 2019

Albany, New York

JUDITH A. HARD

Judge of the Court of Claims

Papers Considered:

1. Notice of Motion, dated February 15, 2019; and Affirmation in Support of Motion for Summary Judgment, affirmed by Michael T. Krenrich, AAG on February 15, 2019, with Exhibits A through J annexed thereto.

2. Affidavit of Timothy D. O'Brien, sworn to February 14, 2019.

1. By letter dated March 22, 2019, counsel for claimant requested an extension of time to submit opposition papers to the instant motion, citing issues in contacting claimant, who was in Haiti at that time. By letter dated April 1, 2019, the Court directed that claimant submit opposition papers no later than May 1, 2019. As of the date of this Decision and Order, counsel for claimant has not submitted papers in response to the instant motion or otherwise contacted the Court.

2. The Sexual Assault Reform Act of 2000 prohibited claimant from residing within 1,000 feet of school grounds upon his supervisory release (see Executive Law § 259-c [14]; Penal Law § 65.10 [4-a]).

3. Both Downstate Correctional Facility and Sing Sing Correctional Facility are maximum security correctional facilities (7 NYCRR 100.88; 7 NYCRR 100.25). Neither facility functions as an RTF.

4. It is not clear from the Court of Appeals or the Appellate Division's decisions whether a DOCCS warrant for the petitioner's arrest in the event of his release from ICE custody was issued in Bourlaye.

5. The Court of Appeals did not determine in Gonzalez whether the petitioner's placement at Woodbourne RTF violated DOCCS' statutory and regulatory obligations related to designated RTFs, citing "insufficient record evidence" (Gonzalez, 32 NY3d at 475). In dissent, Judge Rowan D. Wilson opined that the trial court and the Appellate Division should have permitted discovery and additional fact-finding to determine whether the petitioner's placement at Woodbourne RTF was contrary to law (id. at 485-486 [Wilson, J., dissenting]).

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