

Martinez v State of New York

2019 NY Slip Op 35241(U)

August 14, 2019

Court of Claims

Docket Number: Claim No. None

Judge: Francis T. Collins

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This opinion is uncorrected and not selected for official publication.

Synopsis

Defendant's pre-answer dismissal motion was granted on the ground that although a notice of intention was timely served, the claim was not timely served or filed within one year after his wrongful confinement claim accrued.

Case information

UID: 2019-015-183
Claimant(s): OMAR MARTINEZ
Claimant short name: MARTINEZ
Footnote (claimant name) :
Defendant(s): THE STATE OF NEW YORK
Footnote (defendant name) :
Third-party claimant(s):
Third-party defendant(s):
Claim number(s): NONE
Motion number(s): M-94261
Cross-motion number(s):
Judge: FRANCIS T. COLLINS
Claimant's attorney: Omar Martinez, Pro Se
Defendant's attorney: Honorable Letitia James, Attorney General
By: Belinda A. Wagner, Esq., Assistant Attorney General
Third-party defendant's attorney:
Signature date: August 14, 2019
City: Saratoga Springs
Comments:
Official citation:
Appellate results:
See also (multcaptioned case)

Decision

Movant, proceeding pro se, seeks leave to serve and file a late claim, erroneously citing the General Municipal Law rather than Court of Claims Act § 10 (6).

By Decision and Order dated July 19, 2019, movant's prior claim alleging a cause of action for wrongful confinement was dismissed on the ground it was untimely filed and served. In his prior claim, movant alleged that he was wrongfully confined for 30 days following a prison disciplinary hearing in which he was found guilty of fighting. The court determined that if movant was placed in punitive confinement on January 12, 2018, the date of the incident, and released 30 days thereafter, then the claim accrued on February 12, 2018. Inasmuch as the movant's service of a timely notice of intention on April 20, 2018 extended his time to serve and file a claim until one year after its accrual (Court of Claims Act § 10 [3-b]), the Court found that claimant had until February 12, 2019 to serve and file a claim. As a result, the claim, filed on May 21, 2019 and served on May 24, 2019, was dismissed as untimely. Claimant now submits in support of his late claim motion a Disciplinary Incident Summary, among other things, which indicates he was released from disciplinary confinement on February 11, 2018, not February 12, 2018 as was previously calculated by the Court in the prior Decision and Order.⁽¹⁾

Court of Claims Act § 10 (6) permits, in the Court's discretion, the filing of a late claim against the State "before an action asserting a like claim against a citizen of the state would be barred under the provisions of article two of the civil practice law and rules." Actions against a citizen of the State for wrongful confinement/false imprisonment are governed by a one-year statute of limitations (*see* CPLR § 215 [3]) and accrue upon an inmate's release from disciplinary confinement (*Campos v State of New York*, 139 AD3d 1276, 1277 [3d Dept 2016]). As a result, leave to file and serve a late claim for wrongful confinement cannot be granted as this cause of action accrued on February 11, 2018, more than one year prior to the date the instant motion was filed (*see id.*; *Lerner v State of New York*, 72 AD3d 406 [1st Dept 2010], *lv denied* 15 NY3d 703 [2010], *lv denied* 15 NY3d 703 [2010]; *Sands v State of New York*, 49 AD3d 444 [1st Dept 2008]).⁽²⁾

Accordingly, the motion is denied.

August 14, 2019

Saratoga Springs, New York

FRANCIS T. COLLINS

Judge of the Court of Claims

Papers Considered:

1. Undated notice of motion;
2. Affidavit of Omar Martinez sworn to March 28, 2019, with Exhibit A;
3. Affirmation of Belinda A. Wagner, A.A.G. dated July 29, 2019, with Exhibit A.

1. This one-day difference in the date the claim accrued does not change the court's prior determination that the claim was untimely filed and served.

2. Movant's prior motion to file a late claim was denied, with leave to renew, as he failed to address any of the statutory factors required for consideration on a late claim application and failed to submit a proposed claim in support of the motion (*Martinez v State of New York*, Ct Cl, May 16, 2019, Collins, J., UID No. 2019-015-148 [unreported decisions from the Court of Claims are available via the internet at www.nyscourtofclaims.state.ny.us]). While the time to file a renewal motion to file a late claim is tolled for the period in which the initial motion was pending (*Kealos v State of New York*, 150 AD3d 1211, 1213 [2d Dept 2017]), claimant's prior motion for late claim relief was not served until after the statute of limitations expired. Thus, the toll does not avail the movant here.

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