

**Williams v New York City Dept. of Corr.**

2022 NY Slip Op 31205(U)

April 11, 2022

Supreme Court, New York County

Docket Number: Index No. 162609/2019

Judge: James d'Auguste

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JAMES D'AUGUSTE PART 55**

*Justice*

-----X

ANDREW WILLIAMS,

Plaintiff,

- v -

NEW YORK CITY DEPARTMENT OF CORRECTION, CITY  
OF NEW YORK

Defendant.

-----X

INDEX NO. 162609/2019

MOTION DATE 11/17/2021,  
11/17/2021

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for AMEND CAPTION/PLEADINGS

Motion Sequences 001 and 002 are consolidated for disposition.

**Motion Sequence 001:**

In Motion Sequence 001, defendants New York City Department of Correction and City of New York ("defendants") move to dismiss the complaint for failure to state a cause of action under Civil Service Law § 80, Article I, Section 11 of the New York State Constitution, and the New York State Human Rights Law (SHRL) and the New York City Human Rights Law (CHRL). Plaintiff Andrew Williams opposes the motion. In Motion Sequence 002, plaintiff moves for leave to file an amended complaint and for injunctive relief. Defendants oppose both motions. Motion Sequence 001 is granted, and Motion Sequence 002 is denied.

Plaintiff was appointed to the Department of Corrections ("DOC") as a Probationary Correction Officer in July 2018. Plaintiff was terminated from the DOC prior to ending his

probationary status, allegedly because the DOC discovered photographs of the plaintiff with suspected gang members. Plaintiff states that he is “a minority and therefore a member of a protected class,” although he does not specify his protected class. Complaint, NYSCEF Doc. No. 2, at para. 63; *See eg. Id.* at para. 45 [“Mr. Williams’s Section 80 protections have been violated on the basis of gender and race.”] Plaintiff argues that the DOC’s official reason for his termination – discovering the photographs of the plaintiff with suspected gang members – was merely a pretext for civil service layoffs pursuant to Civil Service Law § 80. Specifically, plaintiff argues that his termination was part of a larger effort by the DOC and City of New York to strategically lay off municipal employees, contrary to the official reason for plaintiff’s termination.

Plaintiff’s complaint is deficient, and therefore, must be dismissed. Plaintiff has not sufficiently alleged that his termination was pretextual, but rather part of a larger “reduction in force,” and assuming, *arguendo*, that plaintiff sufficiently alleged pretextual termination demonstrating that he was terminated as part of the “reduction in force,” plaintiff has not alleged a non-speculative “disparate impact” of this “reduction of force” towards a protected group employed by the DOC. The only argument offered for why plaintiff’s termination was pretextual is because his termination (allegedly due to his association with suspected gang members) occurred during the same multi-year time period when the DOC was reducing its force.<sup>1</sup> The complaint highlights the DOC and City of New York’s mass layoffs (described as the “Department’s Section 80 Events”) as *prima facie* evidence of racial discrimination because DOC employees are overwhelmingly members of protected classes. However, the Court notes that, and plaintiff concedes that, the DOC layoffs were part of a citywide and statewide effort to

---

<sup>1</sup> The Court notes that plaintiff does not argue that his official reason for termination – if true – would constitute unlawful discrimination. Therefore, the Court does not proceed with this analysis.

reform bail laws and reduce pre-trial detention. Critically, plaintiff does not specify his own race nor does he demonstrate that “similarly situated individuals who did not share plaintiff’s protected characteristics were treated more favorably than plaintiff.” Whitfield-Ortiz v Dept. of Educ. of City of New York, 116 AD3d 580, 581 [1st Dept 2014]; *see* Matter of New York State Off. of Mental Health v New York State Div. of Human Rights, 223 AD2d 88, 90 [3d Dept 1996] “[a] prima facie case of disparate impact is not established by a simple showing of statistical disparities in an employer’s workforce” [internal citations omitted]. Plaintiff provides no evidence to demonstrate that the planned layoffs disproportionately affected individuals of any protected class; he merely repeats the conclusion that these layoffs *must* disproportionately impact DOC employees of a protected class because a majority of DOC employees in 2017-2018 were members of a protected class (*see* NYSCEF Doc. Nos. 15, 16). Other arguments presented were found to be without merit. Accordingly, the motion to dismiss must be granted.

**Motion Sequence 002:**

In Motion Sequence 002, plaintiff moves to amend the complaint and for injunctive relief. Both branches of the motion are denied. The proposed amended complaint does not address several of the fatal defects of the original complaint, including failing to provide any support for the allegation that his termination was tied to the “reduction in force” or failing to identify any employment practice that had a “disparate impact” on members of a protected group. *See* Lucido v Mancuso, 49 AD3d 220, 222 [2d Dept 2008] [“an application for leave to amend a pleading pursuant to CPLR 3025(b) ... [is] to be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit.”]. Plaintiff merely reiterates that he is a member of a protected class, and he was terminated from his probationary employment based on his connection to suspected gang members during the same two-year period that the

DOC was laying off employees – therefore his termination must be pretextual. *See Whitfield-Ortiz v Dept. of Educ. of City of New York*, 116 AD3d 580, 581 [1st Dept 2014]; *see Matter of New York State Off. of Mental Health v New York State Div. of Human Rights*, 223 AD2d 88, 90 [3d Dept 1996] [showing requirements for “disparate impact” claims]. The amended complaint remains purely speculative – that a “reduction in force” must disproportionately affect members of a protected group because a majority of DOC employees are members of protected groups. The branch of the motion requesting injunctive relief is also denied. It is well established that monetary damages, rather than injunctive relief, are the appropriate remedy in actions for loss of employment. *See Cohen v Dept. of Social Services of State of N Y*, 30 NY2d 571, 572 [1972].

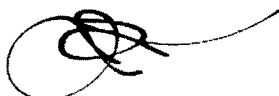
Accordingly, it is hereby,

ORDERED that defendant’s motion to dismiss is granted, and it is further,

ORDERED that plaintiff’s motion to amend the complaint is denied, and it is further,

ORDERED that plaintiff’s motion for injunctive relief is also denied.

This constitutes the decision and order of the Court.

<u>4/11/2022</u>					
DATE			JAMES D'AUGUSTE, J.S.C.		
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input checked="" type="checkbox"/> OTHER	
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART		
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER		
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE	