

IN THE CLAIMS COMMISSION FOR THE STATE OF TENNESSEE
WESTERN DIVISION

FILED
TN CLAIMS COMMISSION
CLERK'S OFFICE

THOMAS D. HALE,

2014 FEB 14 A 9:57

Claimant,

Vs.

Claim No. T20131479

STATE OF TENNESSEE,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

This cause is before the Commission on Defendant's *Motion to Dismiss* and memorandum in support thereof, Claimant's response thereto and, indeed, the record as a whole.

On May 13, 2013, the Division of Claims Administration, ("DCA") received Claimant's claim for personal injuries sustained on February 12, 2010, when officers at Northwest Correctional Complex allegedly failed to protect him from an assault by his cellmate. (See Claimant's Complaint, p. 1) DCA transferred the claim to the Tennessee Claims Commission on August 13, 2013.

Defendant argues that the claims raised in this case are barred by the applicable one-year statute of limitations.

Tenn. Code Ann. § 9-8-402(b) provides that claims are barred "unless the notice is given within the time provided by statutes of limitations applicable by the courts for similar occurrences from which the claim arises." Tenn. Code Ann. § 28-3-104(a) (1) provides for a one year statute of limitations for personal injury claims

Claimant did not file his claim with DCA until May 13, 2013, which is more than two years after the assault. Claimant apparently argues that he failed to file his claim within one year because mental incapacity prevented him from discerning the appropriate forum for filing his claim. He stated specifically that "this claim is filed late because didn't know which state court to file in or its address." (Complaint, p.4) The State correctly asserts that not knowing what court to file in is not adequate grounds to toll the statute of limitations. The State avers that in order to have the statute of limitations extended Claimant would have to document that he was of unsound mind when his cause of action occurred on February 12, 2010. *See Sherrill v. Souder*, 325 S.W.3d 584, 603 (Tenn. Ct. App. 2010). Claimant counters that he was of unsound mind before February 12, 2010. (Reply to Motion to Dismiss, p. 1)

Even if mental incapacity initially prevented Claimant from discovering the proper tribunal, Claimant acknowledges that at least as early as April, 2012, he "found out about this court and its address" and understood that he needed to file a claim. It was more than one year after that discovery that Claimant filed his Complaint with DCA. Therefore, any claim Claimant has against the State of Tennessee for personal injury is barred by the statute of limitations.

Defendant's *Motion to Dismiss* is **GRANTED** and this claim is hereby **DISMISSED**.

IT IS SO ORDERED.


NANCY C. MILLER-HERRON
COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Order was forwarded via first-class mail, postage prepaid, or via hand delivery, this 14th day of February, 2014, to the following:

Mr. Thomas D. Hale, #130892
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PAULA SWANSON, CLERK
Tennessee Claims Commission