

**IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
WESTERN DIVISION**

FILED
TN CLAIMS COMMISSION
CLERK'S OFFICE

2016 FEB -4 P 1:51

JEROME MANNING,

Claimants,

CLAIM NO. T20152546

**STATE OF TENNESSEE,
Defendant.**

ORDER OF DISMISSAL

This matter is before Tennessee Claims Commission, Western Division, upon the Defendant's Motion to Dismiss and the record as a whole.

The Claimant, Jerome Manning, initiated a claim against the Defendant, State of Tennessee, by filing a "Complaint" with the State of Tennessee Division of Claims Administration on May 4, 2015. The claim was transferred from the Division of Claims Administration to the Tennessee Claims Commission on August 3, 2015. On September 9, 2015, Defendant filed a "Motion for Order Requiring Claimant to File a Formal Complaint and/or Motion for More Definite Statement." On October 19, 2015, Claimant filed a "Formal Complaint." Defendant filed a "Motion to Dismiss" on November 16, 2015. Defendant maintains the Complaint should be dismissed because Claimant alleges his constitutional rights were violated but the Claims Commission does not have jurisdiction over such claims; any claim asserted by Claimant would be barred by the statute of limitations and the assertion of a claim for legal malpractice would first require an attorney-client relationship but that no such professional

relationship existed in this instance. Claimant has filed no response to Motion to Dismiss.

The allegations contained in Claimant's Formal Complaint Claimant can be summarized as follows:

- 1) On May 29, 2010, a correction officer, Matthew Dean, was assaulted by inmates in the custody of the Tennessee Department of Corrections. (TDOC)
- 2) Officer Dean apparently did not know the identity of his assailants.
- 3) An investigation of the assault was conducted by Officer Joe England.
- 4) Claimant alleges the investigation and the actions taken thereafter constituted, among other things, legal malpractice, negligence, malicious harassment and violation of his due process rights.
- 5) Claimant alleges the manner in which the investigating officer conducted the investigation constituted legal malpractice, negligence and/or malicious harassment.
- 6) Claimant also makes reference to possible Eighth Amendment claims for cruel and unusual punishment and Fifth and Fourteenth Amendment due process claims concerning prison disciplinary proceedings.

In its Motion to Dismiss Defendant contends the Commission does not have subject matter jurisdiction over certain claims, that the Complaint fails to state a claim upon which relief can be granted and/or the claims are barred by the statute of limitations.

The Commission must first determine if it even has the lawful authority to adjudicate a claim brought before it. Subject matter jurisdiction must be conferred on an adjudicatory body such as the Commission by constitutional provision or legislative act.

Article 1 § 17 of the Constitution of the State of Tennessee provides suits may be brought against the State in such manner and in such courts as the legislature may by law direct. The Tennessee Legislature also recognizes the Doctrine of Sovereign Immunity in Tenn. Code Ann. §20-13-102(a). These constitutional and statutory provisions make clear a State cannot be sued in its own courts without its consent. The Tennessee Claims Commission Act does provide an exception to the general rule that the State may not be sued. However, the Tennessee Claims Commission Act, Tenn. Code Ann. §9-8-301 et seq. narrowly defines the type actions that may be brought before the Claims Commission.

A reading of the Act reveals the Commission has no jurisdiction to hear claims against the State for alleged constitutional violations. Consequently, the Claims Commission is not the appropriate forum to assert a claim for alleged violations of Claimant's constitutional rights, therefore, the claims alleging a violation of Claimant's constitutional rights should be dismissed.

Claimant makes reference to acts of malicious harassment and possible other intentional acts. Tenn. Code Ann §9-8-307(d) specifically states, "The State will not be liable for willful, malicious or criminal acts by state employees, or for acts on the part of state employees done for personal gain." Accordingly, any claim asserted by Claimant in his Complaint for willful, malicious or intentional acts on the part of state employees would be inappropriate for adjudication before the Claims Commission and should, therefore, be dismissed.

Claimant says a professional client relationship existed among the Claimant, I. A. officers and T.D.O.C. employees. Furthermore, the actions of the investigating officer, Joe England, constituted legal malpractice.

Tenn. Code Ann §9-8-307(a)(1)(D) provides a cause of action may be brought against a state for legal malpractice or health care liability provided the state employee has a professional client relationship with the Claimant. Clearly, there was no professional client relationship between any of the investigating officers, including, Joe England, and the Claimant. As a result all claims for legal negligence or legal malpractice must be dismissed.

Claimant maintains that as a result of the investigation following the May 29, 2010, incident he was indicted but the criminal charge against him was dismissed on August 22, 2011. However, according to Claimant, the investigation which followed the May 29, 2010, incident resulted in him being transferred to a maximum security facility and his release eligibility date being extended for five (5) years, all of which Claimant maintains such actions amount to cruel and unusual punishment.

In his prayer for relief Claimant requests that parole dates as well as release eligibility dates be reinstated, that he be released from maximum security and that a disciplinary infraction be removed. The relief which the Commission may grant is only in the form of actual damages. The Commission has no authority whatsoever to grant declaratory or injunctive relief such as that being sought by Claimant. Likewise, the Commission has no authority to impose policy to or override disciplinary actions which may have been taken by T.D.O.C officers. Therefore, all claims regarding actions which may have been taken by

the Tennessee Department of Corrections following the May 29, 2010, events must be dismissed.

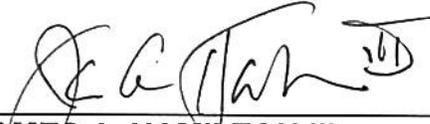
Finally, a reading of the Complaint makes clear all of the Claimant's claims arose out of a single incident which occurred on May 29, 2010, and the ensuing investigation which occurred in the days and months thereafter. The claims of negligence are governed by Tenn. Code Ann §28-3-104 which provides such actions are to be brought within one (1) year of the date of the occurrence. Certainly the events which took place in the prison transpired on May 29, 2010. The indictment against Claimant was dismissed on August 22, 2011. Under any circumstance the claims alleged in the Complaint based on negligence were not brought within the one (1) year statute of limitations.

Claimant has filed neither a response in opposition to the Defendants Motion for Summary Judgement nor an opposing Affidavit.

Rule 0310-1-1-.01(5) of the Rules of the Tennessee Claims Commission provides "(c) Each party opposing a motion shall serve and file a response no later than fifteen (15) days after service of the motion, except in that in case of motions for summary judgement the time shall be thirty (30) days after service of the motion. Failure to file a response shall indicate that there is no opposition to the motion."

Based on the foregoing Defendant's Motion to Dismiss should be **GRANTED**.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Dismiss be and the same is in all respects **GRANTED**.



JAMES A. HAMILTON III
COMMISSIONER

CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing Order has been mailed by U.S. first class mail, postage prepaid, electronically transmitted, or hand-delivered to:

Jerome Manning #432330
7475 Cockrill Bend Blvd.
Nashville, TN 37209

Eric A. Fuller, Esq.
Assistant Attorney General
Office of the Attorney General
P. O. Box 20207
Nashville, Tennessee 37202

on this the 4th day of February, 2016.



PAULA MERRIFIELD, CLERK
TENNESSEE CLAIMS COMMISSION