

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS

Tyrone Lamar Roberson, #191327, )  
 )  
Plaintiff, )

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS**

v. )

C.A. No. 2017-CP-23-03406

South Carolina Attorney General, Alan Wilson; )  
"private party Defendants of Perry Correctional )  
Institution," Warden Larry Cartledge; Associate )  
Warden Stephen Clayton; "private party )  
Defendants of McCormick Corrections )  
Institution," Warden Leroy Cartledge; Associate )  
Warden James Parker, Jr.; Lieutenant Stanley )  
Terry; Nurse Tarcia L. James; "third-party )  
Defendants South Carolina Department of )  
Corrections"; State Budget and Control Board )  
Committee, Commissioner of the Palmetto )  
Unified School District No. #1 Board of Trustee )  
Director; Bryan Stirling, )  
 )  
Defendants. )

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SC Court of Appeals

This matter came before the Court on motion to dismiss of Defendants South Carolina Department of Corrections, Larry Cartledge, Stephen Clayton, Leroy Cartledge, James Parker Jr., Stanley Terry, Tarcia L. James, and Bryan Sterling that was filed on May 23, 2018. A hearing was held on July 18, 2018. Brianna L. Schill appeared on behalf of Defendants South Carolina Department of Corrections, Larry Cartledge, Stephen Clayton, Leroy Cartledge, James Parker Jr., Stanley Terry, Tarcia L. James, and Bryan Sterling. Plaintiff appeared *pro se*. For the reasons discussed below, the Court grants the motion to dismiss.

First, Plaintiff has failed to properly serve any of these Defendants. Rule 4 of the South Carolina Rules of Civil Procedure requires that service upon an individual be made by "delivering a copy of the summons and complaint to the individual personally or by leaving copies of the

summons and complaint at the individual's dwelling house or usual place of abode with a resident of suitable age and discretion, or by delivering a copy to an agent authorized by appointment or by law to receive service of process." Rule 4(d)(1), SCRCP. Rule 4 also provides that service upon the South Carolina Department of Corrections shall be made by delivering a copy of the summons and complaint to such agency and by sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia. Rule 4(d)(4), SCRCP.

Plaintiff did not comply with the requirements of the rules. On June 20, 2017, Plaintiff mailed his Summons and Complaint to Attorney General Alan Wilson by certified mail. Plaintiff did not deliver his Summons and Complaint to the South Carolina Department of Corrections, nor did Plaintiff attempt to otherwise serve his Summons and Complaint on any of the other Defendants. At the hearing, Plaintiff admitted that he only attempted to serve his Summons and Complaint on Attorney General Alan Wilson because he believed that Attorney General Alan Wilson could inform all of the other Defendants of his lawsuit. This Court finds that Plaintiff has failed to properly serve his Summons and Complaint on Defendants as required by Rule 4 of the South Carolina Rules of Civil Procedure, and accordingly, this Court dismisses this case as to all remaining Defendants.

Second, under the South Carolina Tort Claims Act, a plaintiff may not sue employees of a governmental entity like the South Carolina Department of Corrections unless "it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-70(a)-(b). Plaintiff has alleged that the individual defendants were acting in the scope of their duties as employees of the South Carolina Department of Corrections and has not alleged that any

acted with actual malice, committed a crime of moral turpitude or with an intent to harm. Accordingly, Plaintiff's claims against them must be dismissed.

Third, this Court finds that Plaintiff's Complaint has failed to state a claim against the South Carolina Department of Corrections. Plaintiff's Complaint fails to allege that the South Carolina Department of Corrections is liable for any conduct alleged in this case and Plaintiff did not allege that the South Carolina Department of Corrections acted in a grossly negligent manner as required under the South Carolina Tort Claims Act.

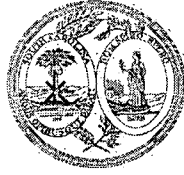
Fourth, this Court finds that many of Plaintiff's Claims are barred by the statute of limitations contained in the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-110. Under the Act, a Plaintiff must commence an action brought under the Act within two years after the date the loss was or should have been discovered. Id. Plaintiff's second cause of action relates to an incident that Plaintiff alleges occurred on February 3, 2014. Plaintiff's third cause of action identifies an incident that allegedly occurred on February 20, 2015. Since Plaintiff did not file his Complaint until May 25, 2017, these claims are barred by the two year statute of limitations imposed by the South Carolina Tort Claims Act, and accordingly, Defendants' Motion to Dismiss is granted.

For the foregoing reasons, Defendants South Carolina Department of Corrections, Larry Cartledge, Stephen Clayton, Leroy Cartledge, James Parker Jr., Stanley Terry, Tarcia L. James, and Bryan Sterling's Motion to Dismiss is granted. This case is dismissed without prejudice.

AND IT IS SO ORDERED.

Alex Kinlaw Jr., Judge  
Court of Common Pleas

July \_\_, 2018  
\_\_\_\_\_, South Carolina



Greenville Common Pleas

**Case Caption:** Tyrone Lamar Roberson vs. Alan Wilson , defendant, et al  
**Case Number:** 2017CP2303406  
**Type:** Order/Dismissal

So Ordered

s/Alex Kinlaw, Jr., #2763