

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

HORACE BELL,

Plaintiff and Appellant,

v.

S. D. FANE et al.,

Defendants and Respondents.

F064396

(Super. Ct. No. 11C0043)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Steven D. Barnes, Judge.

Horace Bell, in pro. per., for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Jonathan L. Wolff, Assistant Attorney General, Thomas S. Patterson and Jose A. Zelidon-Zepeda, Deputy Attorneys General, for Defendants and Respondents.

-ooOoo-

* Before Levy, Acting P.J., Cornell, J. and Gomes, J.

Plaintiff and appellant, Horace Bell, challenges the sustaining of a demurrer to his personal injury complaint.¹ In his complaint, appellant alleged that defendants and respondents, Correctional Officers S.D. Fane and J. Gallagher, filed a false rules violation report against him in June 2006. However, appellant did not submit a government claim regarding this incident until March 2011, over four years later.

The trial court correctly sustained respondents' demurrer without leave to amend. Before suing a public entity, the plaintiff must present a timely written claim for damages. (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 208 (*Shirk*.) Because appellant did not present a timely tort claim, his lawsuit is barred. Accordingly, the judgment will be affirmed.²

BACKGROUND

Appellant is a state prison inmate. On June 1, 2006, appellant threw a banana out of his cell and struck Fane on her hand. Fane filed a rules violation report on June 2, 2006, and appellant was charged with battery on a peace officer. Appellant was found guilty of this charge on June 13, 2006, and a penalty was assessed. Appellant forfeited 150 days of conduct credit and lost certain privileges for up to 90 days.

¹ Respondents' request for judicial notice of (1) the order sustaining the demurrer without leave to amend and (2) the notice from the superior court stating that the trial judge declined to sign the proposed judgment of dismissal due to the fact that the case was on appeal, is granted.

² Appellant appealed from the order sustaining the demurrer, an order that is interlocutory and therefore not appealable. However, in the interests of justice and to prevent unnecessary delay, we will deem the order sustaining the demurrer as incorporating a judgment of dismissal and treat appellant's notice of appeal as applying to that judgment. (*Conley v. Roman Catholic Archbishop* (2000) 85 Cal.App.4th 1126, 1130.)

On May 3, 2010, appellant filed a personal injury action against Fane in Kern County Superior Court. Appellant alleged that Fane had filed a false rules violation report. In January 2011, the case was transferred to Kings County Superior Court.

On March 25, 2011, appellant submitted a government claim to the Victim Compensation and Government Claims Board. Appellant alleged that Fane committed perjury by filing a false report and that Gallagher participated in the “cover-up false report.” The Board rejected appellant’s claim on May 19, 2011.

On September 6, 2011, appellant filed an amended complaint against Fane and Gallagher. Fane and Gallagher demurred. The trial court sustained the demurrer without leave to amend on the ground that appellant failed to present a tort claim within six months as required by the Government Tort Claims Act. (Gov. Code, § 815 et seq.)

DISCUSSION

Before suing a public entity for personal injury, the plaintiff must present a written claim for damages to the entity not later than six months after accrual of the cause of action. (*Shirk, supra*, 42 Cal.4th at p. 208; *State of California v. Superior Court (Bodde)* (2004) 32 Cal.4th 1234, 1239 (*Bodde*)). Compliance with this claims provision is mandatory. Accordingly, failure to timely present such a claim bars a plaintiff from filing a lawsuit against that entity. (*Bodde, supra*, 32 Cal.4th at p. 1239.) “Complaints that do not allege facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused are subject to a general demurrer for not stating facts sufficient to constitute a cause of action. [Citation.]” (*Shirk, supra*, 42 Cal.4th at p. 209.)

Here, appellant’s cause of action against Fane and Gallagher accrued no later than June 13, 2006, the date appellant was found guilty based on Fane’s banana-throwing incident rules violation report. However, appellant did not present his tort claim until March 25, 2011, over four years later. Therefore, appellant’s claim was untimely and his

action is barred. Thus, the trial court properly sustained respondents' demurrer to appellant's complaint without leave to amend.

DISPOSITION

The judgment is affirmed. In the interests of justice, no costs are awarded. (Cal. Rules of Court, rule 8.278(a)(5).)