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Prisoner who claims guard tried to rape her can hold NYS liable

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ALBANY, N.Y., April 24 (Reuters) - New York state is liable for the alleged attempted rape of a female prisoner by a corrections officer, a judge has ruled.

Court of Claims Judge Alan Marin held that officials at Bayview Correctional Facility were negligent because they failed to heed numerous complaints about Officer Gilbert Eversley.

Prior to the alleged 1999 incident with prisoner Beatrice Morris, at least five inmates complained to prison officials that they had been sexually harassed by Eversley or claimed they witnessed him having sex with other prisoners.

"No effort was made to develop some form of workable resolution; there was no 'what to do about Eversley' meeting -- despite the warning," Marin wrote in a March 6 ruling released last week.

Marin's ruling moves the case into the damages phase.

Morris arrived at Bayview in 1999 while serving a five-year sentence for assault. Eversley, who had been accused of sexually harassing an inmate one month before Morris' arrival, allegedly made a series of sexual advances before entering Morris' cell one night and attempting to rape her.

In the weeks following the alleged incident, Eversley continued to make suggestive remarks, Morris said.

She was transferred to a different facility after Eversley wrote Morris up in a disciplinary report, claiming she had threatened to have him fired and asked him to smuggle items into the prison.

In 2000, Morris, 55, sued Eversley in federal court for violating her civil rights. A jury in 2004 awarded her \$16,000, and a federal judge awarded nearly \$180,000 in attorneys' fees. Eversley never faced criminal charges.

SHOULD HAVE BEEN REMOVED

Morris also sued the state for negligence in the Court of Claims, which has jurisdiction over claims brought against the state.

In 2004, Marin dismissed the claim as untimely. Two years later, the Appellate Division, First Department, reversed, and last year, Morris filed a motion for summary judgment on liability.

She argued that her constitutional rights were violated by the state's negligence. The state countered that summary judgment would be inappropriate because none of the prior allegations against Eversley had been substantiated.

Marin sided with Morris.

"Eversley should have been removed from proximity to female inmates" prior to Morris' arrival at Bayview, the judge wrote. "If that meant transferring him to a facility housing men, that should have been done. More to the point, (the state) makes no argument that Eversley could not have been so assigned."

Morris' attorney, Atara Miller of Milbank, Tweed, Hadley & McCloy, declined to comment on the decision because the case remains open.

The Attorney General's office also declined to comment on the decision.

The case is Beatrice Morris v. State of New York, New York State Court of Claims No. 2012-016-016.

For Morris: Atara Miller of Milbank, Tweed, Hadley & McCloy

For the state: New York Assistant Attorney General Suzette Rivera

(Reporting by Dan Wiessner)

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