

[Cite as *Woods v. Dept. of Rehab. & Corr.*, 2017-Ohio-4463.]

JEFFERY WOODS

Plaintiff

v.

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

Case No. 2016-00015

Magistrate Gary Peterson

DECISION OF THE MAGISTRATE

{¶1} Plaintiff, an inmate in the custody and control of defendant, the Ohio Department of Rehabilitation and Correction (ODRC), brought this action for false imprisonment. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} At trial, Angela Dailey testified that she has been employed by ODRC for 19 years and that for the previous six years she has held the position of a Correction Records Computation Auditor. Dailey explained that the division with which she works is a part of the Bureau of Sentencing Computation (BOSC). Dailey stated that her job duties include, among other things, certifying release dates for inmates incarcerated by ODRC. To calculate such dates, Dailey reviews court documentation, sentencing entries, and indictments.

{¶3} Dailey testified that she reviewed plaintiff's sentencing entries and indictments in order to calculate the expiration of plaintiff's sentences. Those exhibits were admitted as Joint Exhibits 1-8. Plaintiff also admitted several exhibits that are duplicative of the Joint Exhibits.

{¶4} According to the Joint Exhibits, and the exhibits offered by plaintiff, on December 4, 1984, in Case Number B842032, the Hamilton County Court of Common Pleas sentenced plaintiff to a minimum term of five years and a maximum term of

25 years for aggravated robbery. (Joint Exhibit 2). That same day, in Case Number B842819, plaintiff was sentenced to a minimum term of five years and a maximum term of 25 years for aggravated robbery. (Joint Exhibit 1). The sentencing entry in B842819 provided that the term of imprisonment shall run concurrently with B842032. (Joint Exhibit 1). In July 1985, the Hamilton County Court of Common Pleas suspended the sentences in B842819 and B842032 and placed plaintiff on probation. (Joint Exhibit 3).

{¶5} On August 7, 1986, the Hamilton County Court of Common Pleas sentenced plaintiff in Case Number B852988 after being found guilty of five counts of rape (counts 1-5), one count of aggravated robbery (count 8), one count of attempted rape (count 11), and one count of robbery (count 12). (Joint Exhibit 4). Plaintiff was sentenced to a minimum term of 10 years and a maximum term of 25 years on each of counts 1-5 and 8 and to a minimum term of five years and a maximum term of 15 years on each of counts 11 and 12. *Id.* The sentencing entry ordered that the sentences for counts 1-5 and 8 run concurrently and that the sentences for counts 11 and 12 run concurrently. *Id.*

{¶6} Also on August 7, 1986, the Hamilton County Court of Common Pleas, issued a judgment entry in B842819 revoking plaintiff's probation and ordered that plaintiff be imprisoned for "a minimum term of Ten (10) years (Actual), and a maximum term of Twenty-Five (25) years to run consecutive with B852988 and B842032." (Joint Exhibit 5).

{¶7} Additionally, on August 7, 1986, the Hamilton County Court of Common Pleas issued a judgment entry in B842032 revoking plaintiff's probation and ordered that plaintiff be imprisoned for "a minimum term of Five (5) years (Actual), and a maximum term of Twenty-Five (25) years to run consecutive with B852988." (Joint Exhibit 6).

{¶8} In 1995, the Hamilton County Court of Common Pleas issued an amended judgment entry in B842819 wherein the court stated that the August 7, 1986 entry be

amended nunc pro tunc to read that plaintiff “is sentenced to be imprisoned in the Ohio Penitentiary for a minimum of five (5) years and a maximum of twenty-five (25) years and pay costs. Said sentence to run concurrent with B842032 but consecutive to B852988.” (Joint Exhibit 7).

{¶9} Also in 1995, the Hamilton County Court of Common Pleas issued an amended judgment entry in B842032 wherein the court stated that the August 7, 1986 entry be amended nunc pro tunc to read that plaintiff “is sentenced to be imprisoned in the Ohio Penitentiary for a minimum of five (5) years and a maximum of twenty-five (25) years and pay costs. Said sentence to run concurrent with B842819 but consecutive to B852988.” (Joint Exhibit 8).

{¶10} Dailey testified that she reviewed plaintiff’s sentencing entries in addition to any jailtime credit that he received to calculate his maximum release date. Dailey stated that the sentencing entries provide that plaintiff be sentenced to a maximum of 25 years for B842032 to run concurrent with the maximum of 25 years in B842819, but consecutive to the maximum sentence of 25 years in B852988. Dailey explained that consecutive means that the sentences are served one right after the other, whereas concurrent means the sentences are served at the same time. As a result, Dailey calculated that plaintiff’s maximum release date is November 19, 2034.

{¶11} Finally, Dailey testified that three of the judgment entries are signed by the judge in the top right corner of the documents, although she acknowledged that the judge did not sign directly above the signature line on one of the entries. (Joint Exhibits 4-6). Dailey added that in her position, she has reviewed many judgment entries from the Hamilton County Court of Common Pleas and that it is not uncommon for a judge to sign the document in the top right corner.

{¶12} Plaintiff testified that the sentencing entry in B852988 is void inasmuch as he believes the judge failed to sign the document. In addition, plaintiff testified that the sentencing entry in B852988 fails to state how the sentence is to be served in relation to

B842819 and B842032. Plaintiff stated that the sentences for B842819 and B842032 are to be served concurrently and that in 2009 he completed the maximum sentence with respect to those two cases. Plaintiff reasoned that inasmuch as the sentence in B852988 is void due to the lack of the judge's signature above the signature line, he has completed his sentences.

{¶13} Plaintiff testified that the amended sentences were issued nunc pro tunc and that the court is prohibited from imposing a new sentence of imprisonment or altering his terms of imprisonment in such an entry. As a result, plaintiff concluded that the nunc pro tunc entries are not relevant to this case. Additionally, plaintiff maintained that ODRC used a repealed law to justify his continued incarceration.

{¶14} Plaintiff testified that two years prior to the trial in this case he wrote a letter to Ryan Dolan, an attorney for ODRC, inquiring regarding the computation of his sentences. Plaintiff stated that he received a response from Dolan explaining why ODRC continues to confine him, but plaintiff nevertheless continues to believe that the sentence in B852988 is void. (Joint Exhibit 9).

{¶15} "False imprisonment occurs when a person confines another intentionally 'without lawful privilege and against his consent within a limited area for any appreciable time, however short.'" *Bennett v. Ohio Dept. of Rehab. & Corr.*, 60 Ohio St.3d 107, 109 (1991), quoting *Feliciano v. Kreiger*, 50 Ohio St.2d 69, 71 (1977). "Pursuant to R.C. 2743.02(A)(1), the state may be held liable for the false imprisonment of its prisoners." *Id.* at paragraph two of the syllabus. "[T]he elements of an inmate's claim of false imprisonment are: (1) expiration of the lawful term of confinement, (2) intentional confinement after the expiration, and (3) knowledge that the privilege initially justifying the confinement no longer exists." *Jones v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 16AP-138, 2016-Ohio-5425, ¶ 8; see *Griffin v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 10AP-733, 2011-Ohio-2115, ¶ 19, quoting *Corder v. Ohio Dept. of Rehab. & Corr.*, 94 Ohio App. 3d 315, 318, 640 N.E.2d 879 (10th Dist.1994).

{¶16} “An action for false imprisonment cannot be maintained, however, when the imprisonment is in accordance with the judgment or order of a court, unless it appears such judgment or order is void on its face. * * * Therefore to succeed on a false imprisonment claim based on imprisonment pursuant to a court’s entry or order, the court’s entry must be invalid on its face. Facial invalidity does not require the consideration of extrinsic information or the application of case law.” *Pruitt v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 13AP-117, 2013-Ohio-3743, ¶ 7 (citations omitted).

{¶17} Upon review of the evidence, the magistrate concludes that plaintiff failed to prove his claim by a preponderance of the evidence. The magistrate finds that on December 4, 1984, in B842819, the Hamilton County Court of Common Pleas sentenced plaintiff to be imprisoned for a minimum term of five years and a maximum term of 25 years. (Joint Exhibit 1). The court ordered that the sentence be served concurrently with B842032, wherein plaintiff was also sentenced to a minimum term of imprisonment of five years and a maximum term of 25 years. (Joint Exhibit 2). Both sentences were subsequently stayed and plaintiff was placed on probation. (Joint Exhibit 3).

{¶18} On August 7, 1986, after being found guilty of several criminal offenses, the Hamilton County Court of Common Pleas sentenced plaintiff to be imprisoned for a minimum of 10 years and a maximum of 25 years on each of the counts 1-5 and 8; the sentences were ordered to be served concurrently. On counts 11 and 12, the Hamilton County Court of Common Pleas sentenced plaintiff to be imprisoned for a minimum of five years and a maximum of 15 years, also to be served concurrently. (Joint Exhibit 4).

{¶19} That same day, on August 7, 1986, the Hamilton County Court of Common Pleas revoked plaintiff’s probation and ordered the execution of the sentence imposed in B842819. The court also ordered that the term of imprisonment run consecutive to B852988 and B842032. (Joint Exhibit 5). Likewise, in B842032, the Hamilton County

Court of Common Pleas revoked plaintiff's probation and ordered the execution of the sentence. The court ordered the term of imprisonment to run consecutive with B852988. (Joint Exhibit 6).

{¶20} In December of 1995, the Hamilton County Court of Common Pleas amended the sentencing entries in B842819 and B842032. The sentencing entry in B842819 was amended nunc pro tunc as of August 7, 1986, to read that the sentence of imprisonment of a minimum of five years and a maximum of 25 years is to run concurrent with B842032 but consecutive to B852988. (Joint Exhibit 7). The judgment entry in B842032 was amended nunc pro tunc as of August 7, 1986, to read that the prison sentence of a minimum of five years and maximum of 25 years is to run concurrent with B842819 but consecutive to B852988. (Joint Exhibit 8).

{¶21} Plaintiff argues that the sentencing entry in B852988 is void inasmuch as the judge for the Hamilton County Court of Common Pleas failed to sign the entry. However, the magistrate finds that the entry is signed in the top right corner of the document. (Joint Exhibit 4). Additionally, Dailey credibly testified that in her job reviewing sentencing entries to calculate the maximum release date of an inmate's sentence, it is not unusual to see a Hamilton County Court of Common Pleas judge's signature affixed to the top right corner of a sentencing entry. Indeed, in two more judgment entries from the Hamilton County Court of Common Pleas, a signature is affixed to the top right corner of the document. (Joint Exhibits 5-6). Accordingly, the magistrate finds that plaintiff's sentencing entries are facially valid and that plaintiff is essentially serving an aggregate maximum sentence of 50 years of imprisonment. Moreover, defendant is immune from liability even if an otherwise facially valid judgment or order is later determined to be void. *Bradley v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 07AP-506, 2007-Ohio-7150, ¶ 12.

{¶22} Additionally, plaintiff argues that the Hamilton County Court of Common Pleas sentenced him in a nunc pro tunc entry. Plaintiff asserts that such a procedure is

prohibited. However, “[a] party who has had the opportunity to appeal a criminal conviction cannot substitute an action in the Court of Claims for an appeal to the proper appellate court.” *Perry v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 11AP-571, 2012-Ohio-452, ¶ 22. “Furthermore, the statute governing actions in the Court of Claims, R.C. 2743.02, was not intended to confer jurisdiction for the Court of Claims to review criminal proceedings occurring in the court of common pleas.” *Id.*, citing *Dunlap v. Ohio Pub. Defender’s Office*, 10th Dist. Franklin No. 08AP-474, 2009-Ohio-363, citing *Donaldson v. Court of Claims of Ohio*, 10th Dist. Franklin No. 91AP-1218, 1992 Ohio App. LEXIS 2584 (May 19, 1992); *Troutman v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 03AP-1240, 2005-Ohio-334. Plaintiff’s claim appears to be an attempt to challenge the sentencing entries of the Hamilton County Court of Common Pleas. Consequently, to the extent plaintiff asserts such a claim, the court is without jurisdiction to review criminal proceedings of the Hamilton County Court of Common Pleas.

{¶23} Therefore, the magistrate concludes that at all times relevant, defendant has confined plaintiff pursuant to valid sentencing entries and that based upon those valid sentencing entries, plaintiff’s maximum release date is November 19, 2034, nearly 50 years after plaintiff’s initial incarceration. For the foregoing reasons, the magistrate concludes that plaintiff has failed to prove his claim by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

{¶24} *A party may file written objections to the magistrate’s decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely*

and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

GARY PETERSON
Magistrate

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