

[Cite as *Young v. Ohio Dept. of Rehab. & Corr.*, 2017-Ohio-4464.]

CHRISTOPHER YOUNG

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2016-00099

Judge Patrick M. McGrath  
Magistrate Sophia Chang

DECISION

{¶1} On January 24, 2017, defendant filed a motion for summary judgment. On the same day, plaintiff filed a motion for partial summary judgment. Plaintiff filed a memorandum contra defendant’s motion for summary judgment on February 8, 2017, and on February 10, 2017, defendant filed a memorandum contra plaintiff’s motion for partial summary judgment. The motions are now before the court for a non-oral hearing pursuant to Civ.R. 56 and L.C.C.R. 4.

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} “Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party’s favor.” See also

*Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶4} At all relevant times, plaintiff was an inmate in the custody and control of defendant. Plaintiff alleges in his complaint that he was falsely imprisoned for 661 days after the conclusion of his sentence pursuant to his July 29, 2008 sentencing orders from three separate charges as described below:

- 1) 07-498250-A: “THE COURT IMPOSES A PRISON SENTENCE AT THE LORAIN CORRECTIONAL INSTITUTION OF 4 YEAR(S). 1 YEAR AS TO FIREARM SPECIFICATION TO RUN PRIOR TO AND CONSECUTIVE TO 3 YEARS ON BASE CHARGE OF COUNT 1 FOR A TOTAL OF 4 YEARS. SENTENCE TO RUN CONCURRENT WITH CASE CR 507594 AND CR 510974.”
- 2) 08-510974-A: “THE COURT IMPOSES A PRISON SENTENCE AT THE LORAIN CORRECTIONAL INSTITUTION OF 5 YEAR(S). 3 YEARS AS TO FIREARM SPECIFICATION TO BE SERVED PRIOR TO AND CONSECUTIVE TO 2 YEARS ON BASE CHARGE OF COUNT 1 FOR A TOTAL OF 5 YEARS. SENTENCE TO RUN CONCURRENT TO CASES CR 49250 AND CR 507594.”
- 3) 08-507594-A: “THE COURT IMPOSES A PRISON SENTENCE AT THE LORAIN CORRECTIONAL INSTITUTION OF 18 MONTH(S). TO RUN CONCURRENT TO CASES CR 510974 AND CR 498250.”

{¶5} On March 27, 2013, plaintiff filed a petition for writ of habeas corpus in the Marion County Court of Common Pleas. The court granted summary judgment against plaintiff based upon R.C. 2929.14, which requires firearm specifications to be served consecutively to base sentences. The court found that as a matter of law, plaintiff’s sentence was seven years. On appeal, the Third District Court of Appeals remanded the case based upon the ambiguity of the sentencing entries. On September 17, 2014, the common pleas court concluded that it was bound by the Third District’s decision and determined that plaintiff’s sentence was a total of five years, inclusive of the firearm specifications, in contravention of R.C. 2929.14. Plaintiff was released on that day.

{¶6} Defendant first argues in its motion for summary judgment that plaintiff's complaint was filed outside of the applicable statute of limitations. Defendant argues that the statute of limitations began when plaintiff discovered that he was wrongfully imprisoned, which was the date he filed his writ of habeas corpus. Plaintiff states that his complaint was timely filed because false imprisonment claims accrue each day one is falsely imprisoned, and that his claim was preserved by the savings statute set forth in R.C. 2305.19.

{¶7} R.C. 2743.16(A) provides, in relevant part, that "civil actions against the state \* \* \* shall be commenced no later than two years after the date of the accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties." Furthermore, R.C. 2305.11(A) states that "[a]n action for libel, slander, malicious prosecution, or false imprisonment \* \* \* shall be commenced within one year after the cause of action accrued \* \* \*."

{¶8} "False imprisonment occurs when a person confines another intentionally 'without lawful privilege and against his consent within a limited area for any appreciable time \* \* \*.'" *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). "An inmate is confined each day he is imprisoned by the state." *Robinson v. Ohio Dept. of Rehab. Corr.*, 10th Dist. Franklin No. 10AP-550, 2011-Ohio-713, ¶ 13. As a general rule, a claim for false imprisonment accrues upon a plaintiff's release from confinement. *Haddad v. Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 01AP-1130, 2002-Ohio-2813.

{¶9} Accordingly, although plaintiff may have discovered that he was falsely imprisoned in 2013, his claim for false imprisonment renewed each day he was illegally confined. Therefore, the court finds that plaintiff's claim accrued on September 17, 2014, the day he was released from defendant's custody.

{¶10} The savings statute provides that, "[i]n any action that is commenced or attempted to be commenced, if in due time a judgment for the plaintiff is reversed or if

the plaintiff fails otherwise than upon the merits, the plaintiff or, if the plaintiff dies and the cause of action survives, the plaintiff's representative may commence a new action within one year after the date of the reversal of the judgment or the plaintiff's failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later. This division applies to any claim asserted in any pleading by a defendant." R.C. 2305.19(A).

{¶11} Based on the accrual date, plaintiff was required to file his case on or before September 16, 2015. Plaintiff filed a complaint in the Franklin County Common Pleas Court on July 21, 2015. Subsequently, plaintiff filed a voluntary dismissal pursuant to Civ.R. 41(A)(1)(a) on January 25, 2016, and filed his claim in this court on February 9, 2016. Pursuant to R.C. 2305.19(A), plaintiff has timely filed his claim in this court. By filing his complaint in the Franklin County Common Pleas Court within the one year statute of limitations and because that case was dismissed other than upon the merits, plaintiff had until January 24, 2017 to file his case in this court. Therefore, defendant's statute of limitations argument is not well-taken.

{¶12} As a separate argument, defendant states that plaintiff was legally confined pursuant to facially valid sentencing orders. Although defendant acknowledges that the sentencing orders are ambiguous, it argues that R.C. 2929.14 required plaintiff's firearm specifications to be served consecutively to plaintiff's base charges, and that the orders are still facially valid. In support of this argument, defendant attaches copies of plaintiff's petition for writ of habeas corpus, plaintiff's three sentencing entries, entries assessing jail-time credit, and the decision from the Marion County Court of Common Pleas granting plaintiff's writ.

{¶13} Plaintiff seeks partial summary judgment on the same issue. Plaintiff argues that defendant, by generally denying two of its requests for admissions, has failed to comply with Civ.R. 36. Plaintiff states that because the general denial was not compliant, those admissions are deemed admitted. Furthermore, based upon those

admissions, plaintiff argues that he should prevail on his claim for false imprisonment. In support of his motion, plaintiff includes a copy of the requests for admission and the affidavit of one of his attorneys, Brian K. Duncan, Esq. (Duncan).

{¶14} In response, defendant argues that the affidavit of Duncan is improper evidence under Civ.R. 56(E) and that its general denial was proper pursuant to Civ.R. 36(A)(2).

{¶15} Civ.R. 36(A)(2) states, in relevant part, that “[t]he answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his or her answer, or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. \* \* \* A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Civ.R. 37(C), deny the matter or set forth reasons why the party cannot admit or deny it.”

{¶16} Plaintiff argues that defendant was required to qualify its denial of his third and fourth interrogatories, which state:

3) Admit that Defendant, via its agents, representatives, and/or otherwise, wrongfully confined Plaintiff intentionally without lawful privilege and against his consent within a limited area in prison from November 26, 2012, through September 16, 2014.

4) Admit that Defendant ODRC *sua sponte* ordered Plaintiff Christopher Young to serve an additional two (2) year sentence without the legal authority to do so.

{¶17} Defendant states that the admissions addressed a genuine issue for trial, to which it could generally deny pursuant to Civ.R. 36(A)(2). Moreover, defendant argues that plaintiff had the responsibility pursuant to Civ.R. 36(A)(1) to state each matter of the requested admissions separately.

{¶18} Plaintiff cites to cases which state that a “general denial is not sufficient and results in an admission.” *St. Paul Fire & Marine Ins. Co. v. Battle*, 44 Ohio App.2d 261, 269, 337 N.E.2d 806 (8th Dist.1975); see also *King Painting & Wallpapering, Inc. v. Aswin Ganapathy Hospitality Assocs., LLC*, 11th Dist. Trumbull No. 2013-T-0076, 2014-Ohio-1372. However,

- a. [i]f the party who requested the admissions is not satisfied with the answers or objections he receives, he may move for an order with respect to these answers or objections. He may seek an order that the matters be deemed admitted, or he may request that amended answers be served. If the objection filed by the other party is justified, the trial court will not require a further answer, but if the objection is unjustified the court shall order that an answer be served. If the court determines that an answer does not comply with the requirements of Civil Rule 36, it may order that the matter is admitted, or that an amended answer be served. Civil Rule 36 places upon both the requesting party and the responding party certain obligations which if not diligently met may result in adverse consequences.
- b. As mentioned above, the party who has requested the admissions may move for an order with respect to the answers or objections. On the other hand, he may choose not to seek an order clarifying the responses, preferring rather to rely on the legal significance of the replies as they stand. However, in doing so, he takes a calculated risk that the trial court may rule that the answers or objections are validly stated and thus do not constitute admissions.

*Battle, supra* at 270-271.

{¶19} Furthermore, other courts have cautioned that the notion “must not be construed to mean that no general denial is ever sufficient. Taken in its proper context, it merely means that a general denial is insufficient when good faith requires that a party qualify his answer, or deny only a part of the matter.” *K. Ronald Bailey & Assoc. Co., L.P.A. v. Matesick*, 6th Dist. Erie No. E-92-40, 1993 Ohio App. LEXIS 2886 (June 11, 1993), at fn. 1 (internal citations omitted).

{¶20} The general denial rule asserted in *Battle*, “must be understood in terms of a request for admission that contains several assertions of fact. In all probability, one or more of these assertions of fact will be true. Accordingly, a general denial \* \* \* results in an admission of such request because it does not meet the *substance* of the request; it does not ‘specify so much of it as is true and qualify or deny the remainder.’” *Buckeye Union Ins. Co. v. Regional Transit Authority*, 14 Ohio Misc. 2d 11, 471 N.E.2d 885 (January 19, 1983).

{¶21} In *Buckeye Union*, the requests for admission included multiple statements of facts, including the subject, mode of transportation, time, day, location, and direction. The court in *Buckeye Union* found that a general denial of a request for admission with so many issues of fact was not proper. Looking at the admissions in this case, the court finds that the nature and content of the admissions are distinguishable from the admissions in *Buckeye Union*. Here, plaintiff is seeking an admission of liability from defendant—an issue of law to be determined at trial—and relying on the assumption that defendant’s general denial would be deemed admissions by this court as a matter of law to support his partial summary judgment. Furthermore, the requests for admission that plaintiff seeks does not include such statements of fact as to require a qualification of defendant’s denial. Plaintiff also had the opportunity to move for an order with regard to the admissions pursuant to Civ.R. 36(A)(3), but did not. Accordingly, the court finds defendant’s general denials sufficient. *See Farmer v. Gahn*, Franklin C.P. No. 09-CVC03-4052, 2009 Ohio Misc. LEXIS 14505 (Sept. 10, 2009).

{¶22} Civ.R. 56(E) states that “affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.” “Personal knowledge is knowledge gained through firsthand observation or experience, as distinguished from a belief based on what someone else said.” *State ex rel. Anderson v. The Vill. of Obetz*, 10th Dist. Franklin No. 06AP-1030, 2008-Ohio-4064, at

¶ 22 (internal citations omitted). Although plaintiff's counsel states in his affidavit that he has personal knowledge of his averments, it is clear that his statements are based upon information and belief rather than personal knowledge. Nearly all of the statements in the affidavit relay information learned through his client or refer to the admissions discussed previously. Accordingly, plaintiff's affidavit is insufficient under Civ.R. 56(E).

{¶23} Moreover, by submitting his affidavit, counsel is presenting himself as a witness in this case. Prof.Cond.R. 3.7(a) states that "[a] lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness" unless certain exceptions apply. None of the exceptions apply in this case, and as such, Duncan's affidavit is improper. See generally, *Mentor Lagoons, Inc. v. Rubin*, 31 Ohio St.3d 256, 510 N.E.2d 379 (1987).

{¶24} In order to prevail on a claim of false imprisonment, a plaintiff must show that: 1) his lawful term of confinement expired; 2) defendant intentionally confined him after the expiration, and 3) defendant had knowledge that the privilege initially justifying the confinement no longer existed. *Corder v. Ohio Dept. of Rehab. & Corr.*, 94 Ohio App.3d 315, 318 (1994). However, "an action for false imprisonment cannot be maintained where the wrong complained of is imprisonment in accordance with the judgment or order of a court, unless it appear that such judgment or order is void." *Bennett, supra* at 111. See also *Bradley v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 07AP-506, 2007-Ohio-7150, ¶ 10. Thus, the state is immune from a common law claim of false imprisonment when the plaintiff was incarcerated pursuant to a facially-valid judgment or order, even if the facially-valid judgment or order is later determined to be void. *Id.* at ¶ 11. Facial invalidity does not require the consideration of extrinsic information or the application of case law. *Gonzales v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 08AP-567, 2009-Ohio-246, ¶ 10. Furthermore, "[d]efendant ha[s] no discretion to release an inmate until it receive[s] an entry indicating [defendant] no longer [is] privileged or justified in confining the inmate." *Trice v. Ohio*

*Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 07AP-828, 2008-Ohio-1371, ¶ 19; see also *Griffin v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 10AP-733, 2011-Ohio-2115, ¶ 21.

{¶25} In this case, plaintiff does not contend that the sentencing entries are invalid. Rather, plaintiff essentially argues that defendant erred to properly calculate the expiration date of his sentence and sua sponte extended his sentence beyond the language of the sentencing entries. In a similar case where an inmate was not contesting the validity of his sentencing orders, but was instead arguing that one sentence should have been served prior to another sentence, the Tenth District Court of Appeals found it appropriate to analyze applicable law regarding the implementation of the sentences. *Jones v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 16AP-138, 2016-Ohio-5425. Accordingly, plaintiff's situation also requires the analysis of applicable law.

{¶26} R.C. 2929.14(C)(1)(a) states that "if a mandatory prison term is imposed upon an offender pursuant to division (B)(1)(a) of this section for having a firearm on or about the offender's person or under the offender's control while committing a felony, if a mandatory prison term is imposed upon an offender pursuant to division (B)(1)(c) of this section for committing a felony specified in that division by discharging a firearm from a motor vehicle, or if both types of mandatory prison terms are imposed, the offender shall serve any mandatory prison term imposed under either division consecutively to any other mandatory prison term imposed under either division or under division (B)(1)(d) of this section, consecutively to and prior to any prison term imposed for the underlying felony pursuant to division (A), (B)(2), or (B)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender."

{¶27} This statute requires that firearm specifications must be served consecutively and prior to any prison term for the underlying felony. As analyzed by the

Marion Court of Common Pleas, plaintiff was required to serve four years for his firearm specifications prior to his three-year base charge sentence in case number 07-498250-A pursuant to R.C. 2929.14(C)(1)(a). Therefore, the court finds that defendant did not err when it calculated plaintiff's sentence release date to be November 22, 2014, inclusive of earned jail-time credit of 234 days. Even though plaintiff's writ was eventually granted in contravention of the statute, at the time of plaintiff's release, his stated term had not yet expired. Accordingly, defendant still had privilege to confine plaintiff until it received the entry granting the writ and ordering his release.

{¶28} Insofar as plaintiff also alleges negligence, intentional and negligent infliction of emotional distress, and malicious prosecution in violation of constitutional rights under 42 U.S.C. § 1983, the court dismissed these claims for lack of subject matter jurisdiction in its April 15, 2016 entry of partial dismissal. Assuming, however, that these claims remain pending, the court finds that these claims are based upon the decisions and result of plaintiff's claim for false imprisonment. As such, defendant is entitled to judgment as a matter of law on those claims. *See Favor v. Ohio State Univ.*, Ct. of Cl. No. 2008-00937, 2010-Ohio-4971; *see also Hughley v. Southeastern Corr. Inst.*, Ct. of Cl. No. 2008-09392, 2009-Ohio-2840.

{¶29} Based on the foregoing, the court finds there are no genuine issues of material fact that defendant was legally justified to confine plaintiff at all relevant times, and that defendant is entitled to judgment as a matter of law. Defendant's motion for summary judgment shall be granted, and plaintiff's motion for partial summary judgment shall be denied. Judgment shall be rendered in favor of defendant.

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PATRICK M. MCGRATH  
Judge

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CHRISTOPHER YOUNG

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2016-00099

Judge Patrick M. McGrath  
Magistrate Sophia Chang

JUDGMENT ENTRY

{¶30} A non-oral hearing was conducted in this case upon defendant's motion for summary judgment and plaintiff's motion for partial summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED, and plaintiff's motion for partial summary judgment is DENIED. Judgment is hereby rendered in favor of defendant. All previously scheduled events are VACATED, and all pending motions are DENIED as moot. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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PATRICK M. MCGRATH  
Judge

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