

[Cite as *Alexander v. Ohio Dept. of Rehab. & Corr.*, 2017-Ohio-8099.]

KHYRI B. ALEXANDER

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2017-00034

Judge Patrick M. McGrath
Magistrate Sophia Chang

ENTRY GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

{¶1} On May 19, 2017, plaintiff filed a motion for summary judgment. The court granted defendant an extension until June 16, 2017 to file a response. On June 21, 2017, defendant filed a motion for leave to file a memorandum contra instanter. Upon review, defendant's motion for leave is GRANTED. On June 20, 2017, defendant filed a cross motion for summary judgment. The court granted plaintiff an extension until August 17, 2017 to file a response. Plaintiff did not file response. The motions for summary judgment 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, 364 N.E.2d 267 (1977).

{¶4} Plaintiff, an inmate currently in the custody and control of defendant at Lake Erie Correctional Institution, brings a claim for false imprisonment. Plaintiff states that the entry sentencing him to nine years in prison is void on its face because the Cuyahoga County Court of Common Pleas erred by imposing a sentence that is not authorized by law.

{¶5} "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, 573 N.E.2d 633 (1991), quoting *Feliciano v. Kreiger*, 50 Ohio St.2d 69, 71, 362 N.E.2d 646 (1977). 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, 640 N.E.2d 879 (10th Dist.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.

{¶6} Plaintiff argues in its motion for summary judgment that the sentencing entry was void because he pled guilty to firearm specifications under both R.C. 2941.141 and R.C. 2941.145. Plaintiff states that the Cuyahoga County Court of Common Pleas failed to sentence him correctly under those statutes when taken together with R.C. 2929.14 and H.B. 152 v H130. In support of his motion, plaintiff provides copies of the statutory and legislative provisions as well as his docket information from his underlying criminal case. Plaintiff also provides his own affidavit, which states the following:

{¶7} “1. In 2011 I requested the trial court to vacate/review the void sentence that was imposed in 2010. The state of Ohio didn’t reply for six years. Shortly after the trial court denied to correct void sentence. I do not consent of being in custody of ODRC via void on its face sentence.”

{¶8} In response and in its own motion for summary judgment, defendant argues that plaintiff was legally confined at all times pursuant to a facially valid sentencing entry. Defendant argues further that the determination of facial validity does not require the analysis of the statutes or legislation. In support of its motion, defendant provides the affidavit of Barbara Pond (Pond), defendant’s Correction Records Sentence Computation Auditor. In her affidavit, Pond states the following:

{¶9} “2. In the scope and course of my job duties, I am responsible for reviewing sentencing information from courts and calculating release dates for inmates that are ordered to be incarcerated by DRC.

{¶10} “3. I have reviewed the sentencing information for Plaintiff, Khyri B. Alexander, that DRC has on file, and I am familiar with the sentence imposed on

Alexander by the Cuyahoga County Court of Common Pleas and the calculation of sentence with DRC.

{¶11} “4. Attached as Exhibit A is a true and accurate copy of a sentencing order from the Cuyahoga County Court of Common Pleas regarding Alexander and case number CR-10-536692-B.

{¶12} “5. Alexander was admitted to prison on June 30, 2010. Based upon the sentencing entry DRC received from the Cuyahoga County Court of Common Pleas for case number CR-10-536692-B, along with jail time credit, Alexander is scheduled to be released on April 19, 2019.”

{¶13} Civ.R. 56(E) provides: “When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon mere allegations or denials of the party’s pleadings, but the party’s response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.” Furthermore, a “party’s unsupported and self-serving assertions, offered by way of affidavit, standing alone and without corroborating materials under Civ.R. 56, will not be sufficient to demonstrate material issues of fact. Otherwise, a party could avoid summary judgment under all circumstances solely by simply submitting such a self-serving affidavit containing nothing more than bare contradictions of the evidence offered by the moving party.” *White v. Sears*, 10th Dist. Franklin No. 10AP-294, 2011-Ohio-204, ¶ 8. Accordingly, upon review of the evidence, the court finds that there are no issues of material fact regarding plaintiff’s sentencing entry and his confinement pursuant to it.

{¶14} Insofar as plaintiff’s claim can be construed to bring a wrongful imprisonment claim, defendant argues that plaintiff has not complied with R.C. 2743.48 by pursuing to overturn his conviction in a common pleas court. Indeed, “the Ohio General Assembly ‘enacted R.C. 2305.02 and 2743.48 to authorize civil actions against

the state in the Court of Claims for specified monetary amounts by certain wrongfully imprisoned individuals.” *D’Ambrosio v. State*, 8th Dist. Cuyahoga No. 99520, 2013-Ohio-4472, ¶ 12, citing *Walden v. State*, 47 Ohio St.3d 47, 49, 547 N.E.2d 962 (1989). “Under this statutory framework, ‘a claimant first files an action in the common pleas court seeking a preliminary factual determination that he meets all of the requirements of R.C. 2743.48(A)(1)-(5).’ If successful, the claimant must then ‘file an action in the Court of Claims to recover money damages.’” *Jenkins v. State*, 10th Dist. Franklin No. 12AP-726, 2013-Ohio-5536, ¶ 9, quoting *D’Ambrosio, supra*, at ¶ 12. “Only courts of common pleas have jurisdiction to determine whether a person has satisfied the five requirements of R.C. 2743.48(A).” *Griffith v. Cleveland*, 128 Ohio St.3d 35, 2010-Ohio-4905, paragraph one of the syllabus.

{¶15} In this case, there is no indication that plaintiff followed the procedures set forth in R.C. 2305.02 and 2743.48 and first obtained a determination from a common pleas court that he is a wrongfully imprisoned individual. “Such a determination is a mandatory prerequisite to jurisdiction in the Court of Claims.” *Dvorak v. Pickaway Corr. Inst.*, 10th Dist. Franklin No. 02AP-452, 2002-Ohio-6447, ¶ 21.

{¶16} Based on the foregoing, the court finds that defendant was legally justified to confine plaintiff at all relevant times. There is no evidence presented by plaintiff to indicate that the sentencing entry provided in Pond’s affidavit exhibit is facially invalid. The court also finds that plaintiff has failed to follow the proper procedures to bring a wrongful imprisonment claim in this court. Therefore, construing the evidence most strongly in plaintiff’s favor, the court finds that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law. Accordingly, plaintiff’s motion for summary judgment is DENIED, and defendant’s motion for summary judgment is GRANTED. Judgment is hereby rendered in favor of defendant. All previously scheduled events are VACATED. 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.

PATRICK M. MCGRATH
Judge

cc:

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