

[Cite as *Jackson v. Ohio Dept. of Rehab. & Corr.*, 2020-Ohio-2870.]

THEODORE JACKSON

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2019-00645JD

Judge Patrick M. McGrath
Magistrate Holly True Shaver

DECISION

{¶1} On December 6, 2019, defendant, Ohio Department of Rehabilitation and Correction (ODRC), filed a motion for summary judgment pursuant to Civ.R. 56(C). On December 31, 2019, plaintiff filed a motion for leave to file a cross-motion for summary judgment beyond the dispositive motion deadline, and his response to ODRC's motion for summary judgment. On January 16, 2020, ODRC filed a response to plaintiff's motion for leave.

{¶2} As an initial matter, plaintiff requests leave to file a cross-motion for summary judgment beyond the court's December 6, 2019 dispositive motion deadline. Plaintiff asserts that he was unable to file his motion for summary judgment before the dispositive motion deadline because ODRC did not provide discovery material to him. In its response, ODRC argues that plaintiff's discovery requests were served on the eve of the November 22, 2019 discovery deadline. ODRC states:

In this case Jackson claims he had to file his motion late because he was waiting for discovery responses from ODRC. But Jackson's certificate of service on his discovery requests indicate that he served them on November 7, 2019 (first interrogatories); November 9, 2019 (third requests for admissions); November 12, 2019 (second interrogatories); and November 18, 2019 (request for production of documents or videotapes). See Certificates of Service, attached as Ex. A. Plaintiff has not offered a reason that he waited until the eve of the Court-Ordered discovery

deadline to serve these requests. On July 18, 2019, the Court issued a Scheduling Order setting the discovery deadline for November 22, 2019, and the dispositive motion deadline for December 6, 2019. Jackson should not now be granted leave to file his motion for summary judgment almost a month after the deadline simply because he waited until the last minute to serve ODRC with these discovery requests. Indeed, the civil rules allow a party 28 days (plus three days for mailing) to respond to any discovery requests from an opposing party, which means ODRC's responses to these requests were not even due until December, 2019.

The court does not find plaintiff's motion well taken. Plaintiff offers no explanation why he waited until the expiration of the discovery deadline to serve ODRC with his discovery requests.¹ Accordingly, the court DENIES plaintiff's motion for leave to file his motion for summary judgment. The court will now address ODRC's motion for summary judgment which is before the court for a non-oral hearing pursuant to L.C.C.R. 4. For the reasons stated below, ODRC's motion shall be granted.

Standard of Review

{¶3} Motions for summary judgment are reviewed under the standard set forth in Civ.R. 56(C), which states, in part:

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 summary judgment as a matter of law. No evidence or stipulation may be considered except as stated in

¹Despite being untimely filed, the court reviewed plaintiff's proposed motion for summary judgment. The motion contains nearly identical arguments and evidence contained in plaintiff's response to defendant's motion for summary judgment, which will be addressed in this decision.

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.

{¶4} “[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of material fact on a material element of the nonmoving party's claim.” *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). To meet this initial burden, the moving party must be able to point to evidentiary materials of the type listed in Civ.R. 56(C). *Id.* at 292-293.

{¶5} If the moving party meets its initial burden, the nonmoving party bears a reciprocal burden outlined in Civ.R. 56(E), which states, in part:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the 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.

Factual Background

{¶6} Plaintiff filed his verified complaint alleging that ODRC falsely imprisoned him. Plaintiff was on parole under institution number A399-526 when he was charged with escape. (Complaint, p. 4.) Plaintiff was found guilty of escape and sentenced to serve one year in prison. *Id.* According to plaintiff, his one-year sentence for escape expired on January 30, 2011. *Id.* Plaintiff alleges that he was not released from ODRC's custody until February 4, 2019. *Id.* at p. 5. Plaintiff attached a copy of a

judgment entry from the Cuyahoga County Court of Common Pleas finding him guilty of escape and sentencing him to serve one year in the Lorain Correctional Institution. (Exhibit A to Complaint.) Plaintiff alleges that ODRC falsely imprisoned him by failing to release him after he served his one-year sentence for escape. According to plaintiff, his parole was never revoked on institution number, A399-526. *Id.* at p. 4. Plaintiff also alleges that his continued confinement after January 30, 2011, resulted in claims of constitutional violations, negligence, negligent infliction of emotional distress, malicious prosecution, and abuse of process. *Id.* at p. 6-16.

{¶7} In its motion, ODRC argues, among other things, that plaintiff's assertion that his parole was never revoked under institution number A399-526 fails because his parole paperwork merely contained a typographical error. (Defendant's motion for summary judgment, p. 2.) According to ODRC, when the Adult Parole Authority (APA) revoked plaintiff's parole after he committed a new felony (escape), it inadvertently listed one of plaintiff's other inmate numbers on the relevant document instead of the number that was active at the time. *Id.* According to ODRC, this typographical error has no legal significance as the APA had full discretion to revoke plaintiff's parole after he committed a new felony. *Id.*

{¶8} In support of its motion, ODRC submitted the affidavit of Debra Warren, Correctional Records Sentence Computation Auditor for the Bureau of Sentence Computation. (Warren Aff., ¶ 1.) According to Warren, when an inmate is released on parole, commits a new crime, and returns to ODRC custody, the inmate is issued a new inmate number that corresponds to the new conviction and sentence. *Id.* at ¶ 6. Warren states that because the inmate's parole time is still running at the time of reincarceration, ODRC aggregates, or combines, the inmate files by bringing any indefinite terms that the inmate is still serving forward onto the file of the new inmate number. *Id.* The inmate is required to serve the sentence on the new inmate number before the inmate can be released on parole again. *Id.* Warren stated that, if a new

sentence is ordered to be served concurrent with the prior parole sentence, the maximum sentence expiration date will not change. *Id.* If a new sentence is ordered to be served consecutive to a prior parole sentence, that time must be added to the inmate's maximum sentence expiration date. *Id.* According to Warren, this means that plaintiff's indefinite term from his prior conviction was brought forward and combined with his new number and file each time he was convicted and sentenced while on parole. *Id.*

{¶9} The court notes that plaintiff has a lengthy history with ODRC beginning in 1978. The court finds that the sentencing information relevant to plaintiff's complaint began on October 23, 2006, when plaintiff was again admitted to ODRC's custody under inmate number A513-915. (Warren Aff., ¶ 10.) According to Warren, plaintiff was later restored to parole on inmate number A399-526. *Id.* Plaintiff was declared a parole violator on May 9, 2008 and was restored to parole on December 10, 2008. *Id.* As a result, 215 days of lost time was added to plaintiff's maximum stated term.² *Id.* Plaintiff was again declared a parole violator on June 16, 2009 and restored to parole on December 13, 2009. *Id.* As a result, another 180 days of lost time was added to plaintiff's maximum stated term. *Id.*

{¶10} On July 15, 2010, plaintiff was again admitted to ODRC's custody and assigned inmate number A590-406 to serve a new, one-year sentence from Cuyahoga County for attempted escape. (Warren Aff., ¶ 11; Defendant's Exhibit A-13.) Plaintiff's inmate files were aggregated, and his parole was revoked. *Id.* Plaintiff was then paroled again on February 4, 2019. *Id.* Warren explained that since plaintiff was declared a parole violator, ODRC added each day at large to his maximum sentence expiration date. *Id.* Currently, plaintiff's expiration of his maximum sentence is August 27, 2039. *Id.* at ¶ 13.

²According to Warren, when an inmate violates parole, each day the inmate is considered at large is added to the inmate's stated maximum sentence. This added time is referred to as "lost time."

{¶11} ODRC also submitted the affidavit of Jamie O'Toole-Billingsley, Executive Assistant for the Ohio Parole Board. (O'Toole-Billingsley Aff., ¶ 1.) According to O'Toole-Billingsley, plaintiff, who was on parole at the time, was admitted to ODRC custody on July 15, 2010 on inmate number A590-406 for a new conviction for attempted escape. *Id.* at ¶ 4. Because plaintiff was on parole at the time of his new conviction, the APA moved to revoke his parole on November 16, 2010. *Id.* O'Toole-Billingsley stated, "As the special minutes and PVR/Kellogg Screening documents show, the APA revoked [plaintiff's] parole on his inmate number A399-526 and continued his sentence until the expiration of his stated term on number A590-406." *Id.* O'Toole-Billingsley further stated that on November 23, 2010, plaintiff's parole was revoked. *Id.* at ¶ 6. However, the parole board minutes and PVR/Kellogg Screening document contained a typographical error, and mistakenly stated that plaintiff's parole was revoked on inmate number A513-915 rather than A399-526, the correct number plaintiff's parole was revoked on. (*Id.*; Defendant's Exhibit B-3.) In 2013, the typographical error was corrected. (*Id.* at ¶ 7; Defendant's Exhibit B-4.) O'Toole-Billingsley testified that inmate numbers are numbers ODRC assigns internally to its inmates for the purposes of internal organization and identification. *Id.* at ¶ 8. These numbers are of no consequence outside of ODRC. *Id.*

{¶12} In opposing ODRC's motion for summary judgment, plaintiff submitted his own affidavit, ODRC's responses to his requests for admissions, and several documents attached thereto. In his affidavit, plaintiff avers that his parole was never revoked on inmate number A399-526. Plaintiff avers that because the APA voided the order revoking plaintiff's parole on inmate number A513-915, his parole was never revoked, and he should have been released on January 30, 2011. Plaintiff also avers that APA hearing officer Linker assured him that he would be released back on parole

after serving his one-year sentence for attempted escape.³ Plaintiff further avers that he never appeared at the PVR/Kellogg hearing held on November 16, 2010.

False Imprisonment

{¶13} ODRC argues that it is entitled to summary judgment on plaintiff's false imprisonment claim because at all times relevant, he was incarcerated pursuant to a facially valid sentencing order. "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. 107, 109, 573 N.E.2d 633, quoting *Feliciano v. Kreiger*, 50 Ohio St.2d 69, 71, 362 N.E.2d 646 (1977), quoting 1 Harper & James, *The Law of Torts*, Section 3.7, 226 (1956). "Under the provisions of R.C. 2743.02(A)(1), 'the state may be held liable for the false imprisonment of its prisoners.'" *Abercrombie v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 16AP-744, 2017-Ohio-5606, ¶ 9, quoting *Bennett* at paragraph two of the syllabus. "However, an action for false imprisonment cannot be maintained 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." *Williams v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-77, 2009-Ohio-3958, ¶ 12. "Thus, although the state may be liable for false imprisonment, it retains immunity under common law for claims of false imprisonment when the plaintiff was incarcerated pursuant to a facially valid judgment or order." *Id.* Further, "[t]he state is immune from liability even though the facially valid judgment or order was later determined to be void." *Bradley v. Ohio Dep't of Rehab. & Corr.*, 10th Dist. Franklin No. 07AP-506, 2007-Ohio-7150, ¶ 11.

³Plaintiff did not provide a first name for hearing officer Linker in his affidavit. Furthermore, it appears that plaintiff is contesting the fact that he was never released back on parole after he served his one-year sentence for escape.

{¶14} Construing the evidence in a light most favorable to plaintiff, the court finds that plaintiff can prove no set of facts entitling him to recovery for false imprisonment. Plaintiff does not contest the validity of the sentencing entry ordering him to serve one year following his conviction for attempted escape, nor does he contest the fact that he was on parole supervision when he committed this new felony. Furthermore, the uncontested testimony of Warren and exhibits attached to her affidavit show that plaintiff's stated maximum sentence expires in 2039. Accordingly, the evidence shows that at all times relevant plaintiff was incarcerated pursuant to a facially valid sentencing order. Accordingly, ODRC's motion for summary judgment on plaintiff's false imprisonment claim shall be granted.

Claims Against the APA

{¶15} Despite plaintiff's assertions otherwise, the court finds that he only contests the fact that the APA mistakenly revoked his parole under the incorrect inmate number. However, O'Toole-Billingsley testified that such an error has no bearing on whether an inmate's parole was revoked, and upon learning of the error it was corrected. (O'Toole-Billingsley Aff., ¶ 7-8). Although plaintiff labels his claim as one for false imprisonment, it is evident that plaintiff is attempting to challenge the decision made by the APA to revoke his parole.

{¶16} Pursuant to Civ.R. 12(H)(3), "[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction on the subject matter, the court shall dismiss the action." It is well settled that, "the state cannot be sued in the Court of Claims for its legislative or judicial functions, or the exercise of an executive function involving a high degree of official discretion or judgment." *Deavors v. Ohio Dept. of Rehab. & Correction*, 10th Dist. Franklin No. 98-AP-1105, 9-10 (May 20, 1999), citing *Reynolds v. State, Div. of Parole & Community Servs.*, 14 Ohio St.3d 68, 70, 471 N.E.2d 776 (1984). For this reason, this court does not have jurisdiction to review "a parole board's decision to grant or deny parole." *Duff v. Ohio Adult Parole Auth.*, 10th

Dist. Franklin No. 16AP-851, 2017-Ohio-8895, ¶ 9. The entirety of plaintiff's claim challenges the official judgment and discretion the APA used in making decisions regarding the length and conditions of plaintiff's parole. However, it is well settled that this court is without jurisdiction to consider such a claim. *See Deavors, supra*, at 9-11; *see also Duff* at ¶ 10. Accordingly, plaintiff's claims challenging the decision of the APA shall be dismissed for lack of subject matter jurisdiction.

Constitutional Claims

{¶17} In addition, this court is without jurisdiction to consider claims for relief premised upon alleged violations of the United States Constitution. *Guillory v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin Nos. 07AP-861 and 07AP-928, 2008-Ohio-2299, ¶ 12; *Burkey v. S. Ohio Corr. Facility*, 38 Ohio App. 3d 170 (10th Dist.1988). Claims arising under 42 U.S.C. 1983 may be brought only against "persons." The definition of "person" does not include the state, state agencies, or officials acting in their official capacity. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989). Consequently, it is well established that the Court of Claims lacks jurisdiction over constitutional claims brought pursuant to 42 U.S.C. 1983. *Young v. State*, 10th Dist. Franklin No. 17AP-272, 2018-Ohio-2604, ¶ 49 ("At the outset, we note this court has consistently held that the Court of Claims does not have jurisdiction over actions brought pursuant to 42 U.S.C. 1983."). (Internal quotations omitted.) Accordingly, the court finds that it lacks subject matter jurisdiction over plaintiff's claims for constitutional rights violations. Accordingly, those claims must be dismissed.

Additional Claims

{¶18} Lastly, although plaintiff uses the legal terms negligence, negligent infliction of emotional distress, malicious prosecution, and abuse of process in his complaint, "[t]he mere fact that claims in a complaint are couched in certain legal terms is insufficient to confer jurisdiction upon a court. * * * Instead, in order to resolve the issue

of whether a court has subject-matter jurisdiction over a party's claims, the court must look beyond the language used in the complaint and examine the underlying nature of the claims." *Guillory, supra*, at ¶ 11. Plaintiff's entire complaint is based upon the APA's decision to revoke his parole after he committed a new felony. As stated above, this court is without jurisdiction to review decisions made by the APA. Per the holding in *Guillory* and other cases, the court finds that the facts underlying plaintiff's claims for negligence, negligent infliction of emotional distress, malicious prosecution, and abuse of process solely challenge the APA's discretion in revoking his parole. Accordingly, pursuant to the holdings in *Deavors* and *Duff* outlined above, the additional claims shall be dismissed for lack of subject matter jurisdiction.

Conclusion

{¶19} For the foregoing reasons, ODRC's motion for summary judgment shall be granted on plaintiff's claim of false imprisonment and judgment shall be rendered in favor of ODRC. Plaintiff's claims against the APA, his constitutional claims, and his additional claims shall be dismissed for lack of subject matter jurisdiction pursuant to Civ.R. 12(H)(3).

PATRICK M. MCGRATH
Judge

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THEODORE JACKSON

Plaintiff

v.

OHIO DEPARTMENT OF
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Defendant

Case No. 2019-00645JD

Judge Patrick M. McGrath
Magistrate Holly True Shaver

JUDGMENT ENTRY

{¶20} A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED on plaintiff's claim of false imprisonment and judgment is rendered in favor of defendant. Plaintiff's claims against the APA, his constitutional claims, and his additional claims are DISMISSED for lack of subject matter jurisdiction pursuant to Civ.R. 12(H)(3). All other pending motions are DENIED as moot. 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

Filed March 10, 2020
Sent to S.C. Reporter 5/8/20