

[Cite as *Wyrick v. State Pub. Defender*, 2008-Ohio-5496.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Joseph Wyrick, :
 :
 Plaintiff-Appellant, :
 :
 v. : No. 08AP-448
 : (C.C. No. 2007-07485)
 State Public Defender, :
 : (REGULAR CALENDAR)
 Defendant-Appellee. :

O P I N I O N

Rendered on October 23, 2008

Joseph Wyrick, pro se.

Nancy H. Rogers, Attorney General, and Emily M. Simmons,
for appellee.

APPEAL from the Ohio Court of Claims.

TYACK, J.

{¶1} Joseph Wyrick is appealing from the dismissal of the lawsuit in the Ohio Court of Claims in which he originally named "Eric Allen, Columbus Public Defender" as the defendant. Wyrick assigns three errors for our consideration:

[I.] The Trial Court erred, "when it allowed the 911 tape to admissibly [be] destroyed."

[II.] The Prosecutor in this case, Deliberately Destroyed the 911 tape, to cover-up the facts that Mr. Wyrick is innocent of this crime.

[III.] Mr. Wyrick was misrepresented by his Attorney Eric Allen, at his Trial Court proceedings by allowing the State of

Ohio to destroy the 911 tape, that would prove that Mr. Wyrick was not the man at her home on April 5th, 2004.

{¶2} Wyrick's complaint is riddled with defects which make the action of the Ohio Court of Claims in dismissing his lawsuit appropriate. He does not identify any state agency which has represented him and which is somehow responsible for the situation in which he finds himself.

{¶3} The common pleas court in which he was tried is not a state agency or entity amenable to suit in the Ohio Court of Claims.

{¶4} The first assignment of error is overruled.

{¶5} The prosecuting attorney who prosecuted Wyrick is also not a state agency or entity amenable to suit in the Ohio Court of Claims.

{¶6} The second assignment of error is overruled.

{¶7} The attorney who represented Wyrick at trial is an attorney in private practice in central Ohio. He is not and has not been an employee of the Ohio Public Defender. There is no basis for suing him in the Ohio Court of Claims since he also is not a state agency or entity.

{¶8} The third assignment of error is overruled.

{¶9} All three assignments of error having been overruled, the judgment of the Ohio Court of Claims is affirmed.

Judgment affirmed.

KLATT and T. BRYANT, JJ., concur.

T. BRYANT, J., retired of the Third Appellate District, assigned to active duty under the authority of Section 6(C), Article IV, Ohio Constitution.

KLATT, J., concurring separately.

{¶10} I agree that the judgment of the Ohio Court of Claims should be affirmed but for reasons different than those expressed in the majority opinion. Interpreting appellant's pro se complaint generously, his claims against the State Public Defender seem to be based on three theories: (1) alleged criminal conduct; (2) legal malpractice; and/or (3) constitutional violations. All three of appellant's assignments of error essentially address the merits of his underlying legal theories. For the following reasons, the Ohio Court of Claims did not err in dismissing appellant's complaint.

{¶11} First, to the extent appellant's claims allege that appellee committed criminal violations, the Ohio Court of Claims properly dismissed the complaint. As appellee points out, the Ohio Court of Claims has exclusive original jurisdiction over only civil actions against the state permitted by waiver of immunity contained in R.C. 2743.02. *Troutman v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 03AP-1240, 2005-Ohio-334. The Ohio Court of Claims does not have jurisdiction to adjudicate alleged criminal violations.

{¶12} Second, to the extent that appellant asserts claims against appellee for legal malpractice, the claims are time-barred. An action for legal malpractice brought in the Ohio Court of Claims must be brought one year after the cause of action accrued. R.C. 2743.16(A); 2305.11(A). Appellant alleges that negligent conduct occurred on "August 20, 23, 2005." (Amended Complaint at ¶10.) Thus, appellant would have had to file this action on or before August 23, 2006. Appellant filed this action on September 14, 2007. Therefore, appellant's legal malpractice claims are clearly time-barred and the Ohio Court of Claims did not err in dismissing them.

{¶13} Lastly, to the extent appellant asserts claims for alleged constitutional violations, the Ohio Court of Claims properly dismissed the complaint. Suits for alleged constitutional violations are not actionable in the Ohio Court of Claims. *Triplett v. S. Ohio Corr. Facility*, Franklin App. No. 06AP-1296, 2007-Ohio-2526, citing *Bleicher v. Univ. of Cincinnati College of Med.* (1992), 78 Ohio App.3d 302, 306; *Burkey v. Southern Ohio Corr. Facility* (1988), 38 Ohio App.3d 170.

{¶14} For these reasons, I would overrule appellant's three assignments of error and affirm the judgment of the Ohio Court of Claims.
