

[Cite as *Brown v. Ohio Adult Parole Auth.*, 2010-Ohio-872.]

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Timothy L. Brown,	:	
Plaintiff-Appellant,	:	No. 09AP-797
v.	:	(C.P.C. No. 09CVH02-2140)
Ohio Adult Parole Authority,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

---

D E C I S I O N

Rendered on March 9, 2010

---

*Timothy L. Brown, pro se.*

*Richard Cordray, Attorney General, and Ashley D. Rutherford,*  
for appellee.

---

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} Timothy L. Brown, plaintiff-appellant, appeals from a judgment of the Franklin County Court of Common Pleas, in which the court denied appellant's motion for summary judgment and granted the motion for summary judgment filed by the Ohio Adult Parole Authority ("OAPA"), defendant-appellee.

{¶2} Appellant is an inmate in a prison operated by the Ohio Department of Rehabilitation and Correction. On February 12, 2009, appellant filed a complaint for

declaratory relief against the OAPA. Attached to his complaint, appellant filed an affidavit of indigency listing his property of value.

{¶3} Although many of the precise underlying facts are unclear, from appellant's complaint and his other pleadings in the record, we have cobbled together the following general allegations: (1) in August 2005, appellant was on parole for prior offenses; (2) on August 27, 2005, he was arrested as a "technical parole violator" ("TPV") based upon an arrest for a felony offense ("new felony"), and was incarcerated; (3) on October 11, 2005, the OAPA held a technical parole violation hearing, at which it found appellant had violated the terms of his parole; (4) on June 1, 2006, the OAPA held a post-revocation hearing, at which the parole panel found that appellant was suitable for release after a 12-month sanction for his parole violation, with a recommendation for parole on August 1, 2006; (5) subsequent to the post-revocation hearing, appellant pleaded guilty to the new felony offense, and was sentenced in August 2006 to a two-year prison term to be served consecutive to the TPV sanction; (6) the OAPA held a PVR/Kellogg screening on December 13, 2006, at which it converted the TPV to a Parole Violator Recommissioned ("PVR") based upon the same felony offense it used to originally find him a TPV; (7) after completing the one-year TPV sanction, and all but two months of the two-year felony sentence, the OAPA held a PVR hearing and re-sanctioned appellant using the same new felony offense that was the basis for the one-year TPV sanction. Appellant claims that he had an expectation to liberty upon completion of this TPV sanction and new felony sentence, and the OAPA's use of the new felony offense at both his PVR hearing and the TPV revocation to find a parole violation violated his Double Jeopardy protections.

{¶4} On April 22, 2009, appellant filed a motion for summary judgment. On June 4, 2009, the OAPA filed a cross-motion for summary judgment. On July 29, 2009, the trial court granted OAPA's motion for summary judgment, finding: (1) appellant failed to comply with the filing requirements of R.C. 2969.25(C) by failing to file an affidavit of indigency that set forth the balance of his inmate account for the past six months; and (2) OAPA has discretion whether to grant or deny parole, and appellant had no inherent right to parole. Appellant appeals the judgment of the trial court, asserting the following assignments of error:

[I.] The Trial Court erred to the appellant's prejudice by holding the appellant failed to comply with the mandatory requirements of Ohio Revised Code, section 2969 et. seq., and may not proceed informa pauperis.

[II.] The Trial Court erred to the prejudice of the appellant when it failed to address the appellant's claim of multiple punishment by holding parole is not an inherent right ignoring a parole board may create impermiss[i]ble decisions by violating constitutional guarantees such as imposing two (2) distinct revocations held one (1) year apart, both revocations, based upon one (1) course of conduct.

{¶5} We will address appellant's second assignment of error first. Appellant argues in his second assignment of error that the trial court erred "when it failed to address the appellant's claim of multiple punishment by holding parole is not an inherent right ignoring a parole board may create impermiss[i]ble decisions by violating constitutional guarantees such as imposing two (2) distinct revocations held one (1) year apart, both revocations, based upon one (1) course of conduct."

{¶6} When reviewing a motion for summary judgment, courts must proceed cautiously and award summary judgment only when appropriate. *Franks v. The Lima*

*News* (1996), 109 Ohio App.3d 408. Civ.R. 56(C) provides that, before summary judgment may be granted, it must be determined that: (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion and, viewing the evidence most strongly in favor of the non-moving party, that conclusion is adverse to the non-moving party. *State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 589, 1994-Ohio-130. When reviewing the judgment of the trial court, an appellate court reviews the case de novo. *Franks*.

{¶7} In the present case, appellant claims that the OAPA's use of the same conduct in two parole revocations one year apart violates the Double Jeopardy Clause because it imposes multiple punishments for the same offense. Appellant is correct that the Double Jeopardy provisions in the Fifth Amendment to the Constitution of the United States and Section 10, Article I of the Ohio Constitution bar multiple punishments for the same offense. *State v. Gustafson*, 76 Ohio St.3d 425, 1996-Ohio-299. However, we agree with the trial court that the OAPA's actions did not violate appellant's Double Jeopardy rights. Appellant has cited no authority to support his position, and we find none. The time served as a result of appellant's classification as a TPV and his subsequent conversion from a TPV to a PVR were a continuing consequence of his original conviction. In *State v. Martello*, 97 Ohio St.3d 398, 2002-Ohio-6661, the Supreme Court of Ohio concluded that "jeopardy does not attach when a defendant receives a term of incarceration for the violation of conditions of postrelease control." *Id.* at ¶26. Such a term of incarceration is attributable to the original sentence and is not a "criminal punishment" for Double Jeopardy Clause purposes. *Id.*

{¶8} Here, appellant has not received multiple punishments. Rather, appellant's maximum sentence has been and still is October 4, 2034. Neither the original TPV or PVR classifications changed his maximum sentence in any manner, and appellant does not allege any other type of error in the parole process that would suggest any other constitutional impropriety. In essence, what appellant asserts is that he had an expectation of parole after the expiration of his original TPV sanction and two-year felony sentence. However, there is no inherent right to be conditionally released before the expiration of a valid sentence. *State ex rel. Hattie v. Goldhardt*, 69 Ohio St.3d 123, 125, 1994-Ohio-81, citing *Greenholtz v. Inmates of Nebraska Penal & Correctional Complex* (1979), 442 U.S. 1, 7, 99 S.Ct. 2100, 2104. Furthermore, even when the OAPA has informed an inmate of its decision to grant parole, the inmate has no protected liberty interest in parole before his actual release. *Festi v. Ohio Adult Parole Auth.*, 10th Dist. No. 04AP-1372, 2005-Ohio-3622, ¶16. For these reasons, we find the trial court did not err when it granted summary judgment to the OAPA. Therefore, appellant's second assignment of error is overruled.

{¶9} In his first assignment of error, appellant argues that the trial court erred when it granted OAPA's motion for summary judgment based upon his failure to comply with R.C. 2969.25. Given our finding above, appellant's argument in his first assignment of error would be moot. However, even if we would have found above that the trial court should not have granted summary judgment on the merits, we would find that appellant's complaint should have been dismissed. In granting OAPA's motion, the trial court found appellant failed to provide a statement setting forth the balance in his inmate account for each of the preceding six months and failed to have the statement certified by the

institutional cashier. Appellant claims that he fully complied with R.C. 2969.25(C), which provides:

(C) If an inmate who files a civil action or appeal against a government entity or employee seeks a waiver of the prepayment of the full filing fees assessed by the court in which the action or appeal is filed, the inmate shall file with the complaint or notice of appeal an affidavit that the inmate is seeking a waiver of the prepayment of the court's full filing fees and an affidavit of indigency. The affidavit of waiver and the affidavit of indigency shall contain all of the following:

(1) A statement that sets forth the balance in the inmate account of the inmate for each of the preceding six months, as certified by the institutional cashier;

(2) A statement that sets forth all other cash and things of value owned by the inmate at that time.

{¶10} Here, appellant contends he filed an affidavit of indigency with his complaint and then later attached to his July 2, 2009 response to the OAPA's cross-motion for summary judgment an additional affidavit detailing the balance of his inmate account for each of the preceding six months, as certified by the institutional cashier, in compliance with R.C. 2969.25(C). Appellant also argues that he is not trained in the law and, while a trained lawyer may have filed all the required documents with the original complaint, appellant did eventually file every document necessary to comply with R.C. 2969.25.

{¶11} However, we agree with the trial court that appellant failed to comply with R.C. 2969.25(C) by failing to file with his complaint a statement setting forth the balance in his inmate account for each of the preceding six months, as certified by the institutional cashier. The Supreme Court of Ohio has held that the requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate's action to dismissal. *State ex rel. Norris v. Giavasis*, 100 Ohio St.3d 371, 2003-Ohio-6609, ¶4. Appellant's

argument that R.C. 2969.25(C) does not require him to file his affidavits contemporaneously with the filing of his complaint is not well-founded. R.C. 2969.25(C) explicitly requires that the inmate "shall file with the complaint" the affidavit of indigency and affidavit of waiver. Thus, appellant's belated attempt to file the affidavits and accompanying statements was specifically prohibited by R.C. 2969.25(C). Furthermore, that appellant is not trained in the law is not a justifiable excuse for failing to file the required documents with his complaint. It is well-settled in Ohio that pro se litigants are presumed to have knowledge of the law and of correct legal procedure and are held to the same standard as all other litigants. *Barry v. Barry*, 169 Ohio App.3d 129, 133, 2006-Ohio-5008. A litigant proceeding pro se "cannot expect or demand special treatment from the judge, who is to sit as impartial arbiter." *Kilroy v. B.H. Lakeshore Co.* (1996), 111 Ohio App.3d 357, 363. For these reasons, we find the trial court properly determined that appellant failed to comply with R.C. 2969.25(C) when he failed to "file with the complaint" an affidavit that included a statement that set forth the balance in his inmate account for each of the preceding six months, as certified by the institutional cashier. Therefore, even if the trial court had improperly granted summary judgment on the underlying merits, the trial court could have dismissed appellant's complaint without prejudice for failure to comply with R.C. 2969.25(C). Appellant's first assignment of error is overruled.

{¶12} Accordingly, appellant's two assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

*Judgment affirmed.*

BRYANT and McGRATH, JJ., concur.

---