

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Reamer Bell,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 10AP-920
v.	:	(C.C. No. 2003-01121)
	:	
Ohio Department of Rehabilitation	:	
and Correction,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	
	:	

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D E C I S I O N

Rendered on December 20, 2011

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*Swope & Swope, Attorneys At Law, and Richard F. Swope,*  
for appellant.

*Michael DeWine, Attorney General, and Jennifer Anne Adair,*  
for appellee.

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APPEAL from the Court of Claims of Ohio.

BROWN, J.

{¶1} This is an appeal by plaintiff-appellant, Reamer Bell, from a judgment of the Court of Claims of Ohio, overruling appellant's objections to a magistrate's decision and granting judgment in favor of defendant-appellee, Ohio Department of Rehabilitation and Correction ("DRC"), on appellant's claim of false imprisonment.

{¶2} The following factual background is drawn from the magistrate's decision and record of exhibits following a hearing conducted before the magistrate. On June 5,

1991, appellant was indicted in Hamilton County in case No. B91-3347 on one count of breaking and entering and one count of grand theft. On November 27, 1991, appellant was indicted in Hamilton County in case No. B91-7461 on one count of aggravated burglary and one count of grand theft. On February 26, 1992, appellant entered guilty pleas in both cases. In case No. B91-3347, the trial court sentenced appellant to a definite term of six months. In case No. B91-7461, appellant was sentenced to an indefinite term of two to ten years, to be served concurrently with the sentence in case No. B91-3347.

{¶3} On March 16, 1992, appellant was conveyed to DRC's Correctional Reception Center ("CRC"), along with copies of his indictments, sentencing entries, and sheriff's letters. According to that documentation, appellant was entitled to jail-time credit in case No. B91-3347 for time served from May 14 to June 17, 1991 (34 days), and from October 5, 1991 to March 16, 1992 (163 days), for a total of 197 days. The documentation also indicated that appellant was entitled to jail-time credit in case No. B91-7461 for time served from October 24, 1991 to March 16, 1992, for a total of 144 days. By the time appellant reached the institution, his 180-day definite sentence in case No. B91-3347, reduced by 197 days of jail-time credit, had expired.

{¶4} On September 28, 1992, appellant was furloughed, and, in February of 1993, he was granted his first parole effective March 1, 1993. On October 13, 1993, appellant was declared a parole violator at large ("PVAL"). He was arrested on December 19, 1993, but was restored to parole status on that same date. The Ohio Adult Parole Authority ("APA") sanctioned appellant with "lost time" of two months and six days

for the period of time between October 13 and December 19, 1993, and his maximum release date was extended from October 21 to December 21, 2001.

{¶5} On April 27, 1994, appellant was again declared a PVAL; he was arrested on June 6, 2002, and his lost time was determined to be one month and nine days. Appellant's maximum release date was then recalculated to February 6, 2002. Appellant was returned to prison as a technical parole violator on August 2, 1994, and his parole was formally revoked following a hearing in August 1994. On June 29, 1995, appellant was again paroled. On December 6, 1995, appellant was declared a PVAL for the third time; he was arrested on January 3, 1996, resulting in lost time of 27 days.

{¶6} On February 24, 1997, appellant was paroled for the third time, and he was declared a PVAL for the fourth time on July 2, 1997. Appellant was restored to parole status effective October 9, 1997, but he was charged with an additional 99 days of lost time for the period between July 2, and October 9, 1997. The maximum expiration of his ten-year term was extended to June 13, 2002. Further, while on parole in October 1997, appellant was indicted on four new offenses in Hamilton County in case No. B97-07887. Appellant subsequently entered a guilty plea to two offenses, and the trial court sentenced him to a stated term of two years on each count, to be served concurrently, with 118 days of jail-time credit.

{¶7} On February 12, 1998, appellant was conveyed to CRC on case No. B97-07887, with a copy of the indictment and judgment entry, and a sheriff's letter providing that appellant was entitled to an additional eight days of jail-time credit for the period during which he had been in custody following his sentencing. The expiration of appellant's stated term was calculated to be October 8, 1999 (or two years with 126 days

of jail-time credit). On May 21, 1998, appellant's new sentence was aggregated with the unexpired maximum sentence imposed under case No. B91-7461. On June 24, 1998, appellant's parole was formally revoked and, in August of 1999, his consideration for a fourth parole was continued to the maximum expiration date. Appellant was released on June 13, 2002, upon expiration of the maximum term.

{¶8} On January 7, 2003, appellant filed a complaint against DRC, alleging that his term of incarceration expired on October 22, 1998, but that DRC had wrongfully detained and imprisoned him until June 13, 2002. Appellant sought judgment in the amount of \$500,000.

{¶9} On October 30, 2003, DRC filed a motion for summary judgment. In the accompanying memorandum in support, DRC argued that, pursuant to R.C. 2967.15, the time during which a parolee has been declared a PVAL cannot be credited as time served under the sentence, and therefore appellant's two to ten-year sentence did not reach its maximum expiration until June 13, 2002. Attached to DRC's motion was the affidavit of Mary Oakley, an employee of DRC's Bureau of Sentence Computation. Appellant filed a memorandum contra on January 5, 2004. By entry filed January 14, 2004, the trial court denied DRC's motion for summary judgment.

{¶10} On January 29, 2004, the matter came for trial before a magistrate of the Court of Claims. The magistrate issued a decision on November 25, 2009, recommending that judgment be entered in favor of DRC. On February 11, 2010, appellant filed objections to the magistrate's decision. On March 19, 2010, appellant filed supplemental objections. By decision and entry filed September 2, 2010, the Court of Claims overruled appellant's objections and rendered judgment in favor of DRC.

{¶11} On appeal, appellant sets forth the following four assignments of error for this court's review:

ASSIGNMENT OF ERROR NO. 1:

THE TRIAL COURT AND MAGISTRATE ERRED BY FAILING TO DECIDE THE ISSUES IN THIS CASE FOR OVER SIX (6) YEARS, MAKING IT IMPOSSIBLE FOR AN INDIGENT PLAINTIFF TO PREPARE A SATISFACTORY AFFIDAVIT OF EVIDENCE PURSUANT TO RULE 53, OHIO RULES OF CIVIL PROCEDURE, TO PRESERVE HIS RIGHT OF APPEAL.

ASSIGNMENT OF ERROR NO. 2:

THE TRIAL COURT AND MAGISTRATE ERRED IN CALCULATING JAIL TIME CREDIT, THE SUPREME COURT HAVING RULED IN STATE V. FUGATE, 117 OHIO ST.3D 261, 2008-OHIO-856, THAT WHEN SENTENCED TO CONCURRENT PRISON TERMS FOR MULTIPLE CHARGES, JAIL CREDIT MUST BE APPLIED TOWARD EACH CONCURRENT PRISON TERM.

ASSIGNMENT OF ERROR NO. 3:

THE TRIAL COURT AND MAGISTRATE ERRED IN REJECTING PLAINTIFF-APPELLANT'S CLAIM THE ADULT PAROLE AUTHORITY ILLEGALLY REVOKED HIS PROLE IN EACH AND EVERY CASE BECAUSE THE PAROLE AUTHORITY FAILED TO FOLLOW LEGAL REQUIREMENTS FOR NOTICE OF HEARING AND RIGHT OF HEARING WITHIN TIME PRESCRIBED BY LAW.

ASSIGNMENT OF ERROR NO. 4:

THE TRIAL COURT AND MAGISTRATE ERRED IN RULING THE ADULT PAROLE AUTHORITY CAN ASSESS LOST TIME WHEN THEY FAIL TO FOLLOW THE LAW IN ADJUDICATING A PAROLEE AS A PAROLE VIOLATOR AT LARGE.

{¶12} Appellant's four assignments of error are somewhat interrelated, and will be considered together. Appellant's primary contention is that he was falsely imprisoned because DRC miscalculated his release date by failing to properly apply jail-time credit.

{¶13} A claim for false imprisonment arises "when a person confines another intentionally 'without lawful privilege and against his consent within a limited area for any appreciable time, however short.' " *Fisk v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 11AP-432, 2011-Ohio-5889, ¶11, quoting *Feliciano v. Kreiger* (1977), 50 Ohio St.2d 69, 71, quoting 1 Harper and James (1956), *The Law of Torts*, 226, Section 3.7. In order for a plaintiff to prevail on a claim of false imprisonment, he or she must show that: "(1) his lawful term of confinement expired; (2) the defendant intentionally confined him after the expiration; and (3) the defendant had knowledge that the privilege initially justifying the confinement no longer existed." *Fisk* at ¶11, citing *Corder v. Ohio Dept. of Rehab. & Corr.* (1994), 94 Ohio App.3d 315, 318.

{¶14} Pursuant to R.C. 2742.02(A)(1), DRC may be held liable for false imprisonment. *Fisk* at ¶12. A plaintiff, however, may not maintain an action against DRC for false imprisonment "when the imprisonment is in accordance with an order of a court, unless it appears that the order is void on its face." *Id.* Thus, "DRC may not be held liable on a claim for false imprisonment if DRC incarcerated the plaintiff pursuant to a facially-valid order, even if that order is later determined to be void." *Id.* See also *Williams v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 09AP-77, 2009-Ohio-3958, ¶12 ("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 of order").

{¶15} We will initially address the issue raised under appellant's second assignment of error, in which he contends the Court of Claims and magistrate erred in failing to find that DRC denied him proper jail-time credit. More specifically, appellant

argues that, because the trial court ordered the sentences in case Nos. B91-3347 and B91-7461 to be served concurrently, the 197 days of jail-time credit he was granted in case No. B91-3347 should have been applied to each of the cases. In support, appellant relies upon *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, ¶22, in which the Supreme Court of Ohio held in part: "[W]hen a defendant is sentenced to concurrent terms, credit must be applied against all terms, because the sentences are served simultaneously."

{¶16} Appellant's attempt to apply the holding in *Fugate* to support a claim of false imprisonment against DRC in the instant case is unpersuasive. As noted under the facts, according to the documentation received by DRC at the time appellant was transported to CRC, appellant was entitled to jail-time credit in case No. B91-3347 of 197 days, and jail-time credit in case No. B91-7461 of 144 days.

{¶17} The Supreme Court of Ohio has made clear that, while the APA "has a mandatory duty pursuant to R.C. 2967.191 to credit an inmate with jail time already served, it is the trial court that makes the factual determination as to the number of days of confinement that a defendant is entitled to have credited toward his sentence." *State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio St.3d 476, 2003-Ohio-2061, ¶7. See also Ohio Adm.Code 5120-2-04(B) ("[t]he sentencing court determines the amount of time the offender served before being sentenced"). Specifically, "R.C. 2949.12 provides that upon the conveyance of a convicted felon to a state correctional facility, the institution is provided with a copy of the convicted felon's sentence that clearly describes each offense, designates the sentence imposed, and specifies the total number of days of jail-time credit to which the defendant is entitled pursuant to R.C. 2967.191." *Rankin* at ¶7.

Accordingly, "the APA may credit only the amount of jail time that the trial court determines the inmate is entitled to by law," and the APA "cannot ignore the trial court's determination of jail-time credit and substitute its own judgment in complying with the mandate of R.C. 2967.191." *Id.* at ¶8. See also *Zanders v. Anderson*, 10th Dist. No. 03AP-888, 2004-Ohio-5160, ¶15 (Upon taking custody of the offender, "the DRC must reduce the sentence by the jail-time credit stated in the judgment entry").

{¶18} In general, "the proper vehicle for challenging legal errors in the imposition of jail-time credit is via a direct appeal from the sentencing entry." *State v. Mason*, 7th Dist. No. 10 CO 20, 2011-Ohio-3167, ¶13, citing *State v. Parsons*, 10th Dist No. 03AP-1176, 2005-Ohio-457, at ¶7-8.<sup>1</sup> Pursuant to Ohio Adm.Code 5120-2-04(H), "[a] party questioning either the number of days contained in the journal entry or the record of the sheriff shall be instructed to address his concerns to the court or sheriff." Further, "[u]nless the court issues an entry modifying the amount of jail time credit or the sheriff sends the institution corrected information about time confined awaiting transport, no change will be made." *Id.*

{¶19} Appellant's argument for application of the holding in *Fugate*, based upon his contention that the 197 days jail-time credit he received in case No. B91-3347 should have been credited against the concurrent sentences in those cases, is essentially a legal challenge to the sentencing entry of the Cuyahoga County Court of Common Pleas and/or the sheriff's record. The record in this case does not indicate that appellant attempted to bring to the trial court's attention, either on direct appeal or otherwise, the

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<sup>1</sup> While a motion to correct jail-time credit is an alternative to raising the issue on direct appeal or in post-conviction relief, such device "is limited to scenarios involving a clerical mistake rather than a substantive claim." *State v. Newman*, 6th Dist. No. WD-07-083, 2009-Ohio-2935, ¶10.



issue of whether the court, having imposed concurrent sentences in case Nos. B91-3347 and B91-7461, should have credited appellant for the 197 days in case No. B91-3347 against the sentence the court imposed in B91-7461.

{¶20} This court has previously held that R.C. 2967.191 "does not impose on ODRC the responsibility to determine whether the sentencing court accurately specified the amount of jail-time credit in its sentencing entry." *Trice v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 07AP-828, 2008-Ohio-1371, ¶22. See also *Williams* at ¶15 ("ODRC has no duty under R.C. 2967.191 to investigate the amount of jail-time credit to which an inmate is entitled"). In the present case, the magistrate found, and the Court of Claims agreed, there was no evidence that any of the sentencing orders or APA documents relied upon by DRC were invalid. Upon review, the record supports that determination, and appellant has failed to show a claim for false imprisonment against DRC based upon application of the holding in *Fugate*.

{¶21} Under his third and fourth assignments of error, appellant argues that he was deprived of due process, including the right to notice and timely hearing, before being declared a PVAL. Specifically, appellant contends that the exhibits with respect to the 99 days added to his sentence on October 13, 1997 do not indicate that charges were filed and a hearing held. Appellant further argues that the exhibits submitted by the DRC are unclear, and do not refute his testimony that he was not afforded proper notice and hearing before being declared a parole violator.

{¶22} With respect to appellant's claimed due process violations, the Court of Claims properly held that it lacked jurisdiction to consider such arguments. "This court has consistently held that claims alleging violations of due process \* \* \* are not actionable

in the Court of Claims." *Hamilton v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 06AP-916, 2007-Ohio-1173, ¶14, citing *Bleicher v. Univ. of Cincinnati College of Med.* (1992), 78 Ohio App.3d 302, 307; *Peters v. Ohio Dept. of Natural Resources*, 10th Dist. No. 03AP-350, 2003-Ohio-5895. Rather, by virtue of the fact the state "has consented to be sued in accordance with the rules applicable to private persons, 'a plaintiff in the Court of Claims is limited to causes of action which he could pursue if defendant were a private party.' " *Hamilton* at ¶14, quoting *Thompson v. S. State Community College* (June 15, 1989), 10th Dist. No. 89AP-114. Accordingly, "[b]ecause due process and equal protection violations require an element of state action, they present no viable cause of action in the Court of Claims." *Hamilton* at ¶14. In the present case, any claim by appellant that he was deprived of his constitutional right to due process as a result of the actions of the APA or DRC "was outside the subject-matter jurisdiction of the Court of Claims." *Id.*

{¶23} Appellant contends, under his first assignment of error, that this case should be reversed and remanded for a new trial because of delay by the Court of Claims in rendering a decision. Appellant maintains that the length of time between the trial of this matter before the magistrate, on January 29, 2004, and the magistrate's decision, rendered on November 25, 2009, adversely prejudiced him. Appellant argues that he was indigent, and had to rely on an affidavit of evidence to preserve his appeal right.

{¶24} Courts considering claims of prejudicial delay have considered whether the legal issues were complicated, and whether the trial court had a good understanding of the facts and legal issues. *Cantwell Mach. Co. v. Chicago Mach. Co.*, 184 Ohio App.3d 287, 2009-Ohio-4548, ¶22. In *Cantwell*, this court held that a trial court's five-year delay

in issuing its decision was not prejudicial to the appellant where the issues in the case were not complicated, and the trial court's decision reflected "an informed and meaningful factual and legal analysis of the contested issues." *Id.* at ¶25.

{¶25} As noted, appellant argues that the delay prejudiced his ability to prepare an affidavit of evidence, pursuant to Civ.R. 53, and he raised this issue in his objections to the magistrate's decision. The Court of Claims noted that appellant "did submit a detailed, well-prepared, sworn affidavit which the court has accepted as a substitute for a transcript." The Court of Claims further noted that "the bulk of the evidence in the case consists of the parties' exhibits, which chronicle [appellant's] criminal history."

{¶26} Upon review, appellant has failed to demonstrate prejudice. In appellant's post-trial memorandum, filed approximately two months after the trial conducted by the magistrate, appellant cited the relevant exhibits and testimony in support of his claims. Further, as in *Cantwell*, the issues before the court were not complicated, and the case did not involve a lengthy trial. Accordingly, the Court of Claims did not err in overruling appellant's objection challenging the length of time between the trial of this matter and the issuance of the magistrate's decision.

{¶27} Based upon the foregoing, appellant's first, second, third, and fourth assignments of error are overruled, and the judgment of the Court of Claims of Ohio is hereby affirmed.

*Judgment affirmed.*

SADLER and DORRIAN, JJ., concur.

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