

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Victor Bobo,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 11AP-118
v.	:	(C.C. No. 2010-08535)
	:	
Department of Rehabilitation and	:	(ACCELERATED CALENDAR)
Correction,	:	
	:	
Defendant-Appellee.	:	
	:	

D E C I S I O N

Rendered on September 29, 2011

Victor Bobo, pro se.

Michael DeWine, Attorney General, and *Stephanie D. Pestello-Sharf* and *Amy S. Brown*, for appellee.

APPEAL from the Court of Claims of Ohio.

BRYANT, P.J.

{¶1} Plaintiff-appellant, Victor Bobo, appeals from a judgment of the Ohio Court of Claims granting the summary judgment motion of defendant-appellee, Department of Rehabilitation and Correction ("DRC"). Plaintiff assigns a single error:

[Bureau of Sentence Computation] are liable due to failure to comply with court's journal entry to run sentence Concurrently despite Mr. Bobo's repetitive complaints.

(Sic passim.)

Because the trial court properly granted summary judgment to DRC, concluding DRC held plaintiff pursuant to a valid order of the Cuyahoga County Court of Common Pleas, we affirm.

I. Facts and Procedural History

{¶2} On June 24, 2010, plaintiff filed a complaint, alleging DRC falsely imprisoned plaintiff. According to the allegations of the complaint, plaintiff, at the time he was incarcerated at the Marion Correctional Institution on a separate conviction, was charged with and found guilty of possession of drugs. The Cuyahoga County Court of Common Pleas imposed a sentence of six months to be served concurrently with the crime for which plaintiff was then incarcerated. The complaint asserts that, in response to his question, the sentencing court advised plaintiff his new sentence would not alter the May 24, 2010 release date for plaintiff's earlier conviction.

{¶3} Plaintiff's complaint alleged that, contrary to those representations, the second conviction caused plaintiff's release date to be changed to July 21, 2010; according to the allegations of the complaint, the warden informed plaintiff "the court made a mistake." (Complaint, 2.) Plaintiff asserted that, as a result of DRC's holding him beyond May 24, 2010, he suffered psychological pain and mental anguish for which he was entitled to \$500 for each of the 58 days he was held beyond May 24, 2010.

{¶4} Although DRC initially responded on July 19, 2010 with a motion to dismiss, the trial court denied the motion. DRC subsequently filed an answer on September 16, 2010 and followed it with a motion for summary judgment filed on September 27, 2010.

{¶5} Attached to the summary judgment motion was the affidavit of Melissa Adams, DRC's Chief of the Bureau of Sentence Computation. Averring she had personal

knowledge and was competent to testify to the facts contained in the affidavit, Adams stated that plaintiff was admitted to DRC on October 26, 2009 pursuant to a ten-month sentence imposed on a conviction for receiving stolen property in Cuyahoga County case No. CR09527085. Acknowledging plaintiff had 91 days of jail-time credit, DRC certified a release date of May 24, 2010 for that offense.

{¶6} The affidavit further states that on April 1, 2010, plaintiff was taken to court for case No. CR09532714 in the Cuyahoga County Common Pleas Court, where he received a sentence of six months for possession of drugs. The entry granted plaintiff 71 days of jail-time credit, and he received an additional 12 days conveyance time for a total of 83 days of credit. Beginning computation of his sentence on his return date from court, April 4, 2010, and applying the six-month sentence reduced by 83 days of credit, the bureau computed the stated term to expire on July 21, 2010. DRC held plaintiff for that specified period of time and released him.

{¶7} Plaintiff did not respond to the summary judgment motion. On January 14, 2011, the trial court filed an entry granting DRC's motion for summary judgment. Noting plaintiff failed to respond to the motion, the court concluded the undisputed affidavit testimony revealed "defendant properly computed plaintiff's release date" and was "privileged to confine him at all relevant times." (Entry, 3.) Plaintiff timely appealed.

II. Assignment of Error

{¶8} Plaintiff's single assignment of error asserts the trial court erred in granting DRC's summary judgment motion. Noting that concurrent sentences are to be served simultaneously, his argument intimates that both sentences also must end simultaneously and, in this case, on May 24, 2010.

A. *Standard of Review*

{¶9} An appellate court's review of summary judgment is conducted under a de novo standard. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41; *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588. Summary judgment is proper only when the party moving for summary judgment demonstrates: (1) no genuine issue of material fact exists, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds could 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 most strongly construed in its favor. Civ.R. 56; *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181, 1997-Ohio-221.

{¶10} Pursuant to Civ.R. 56(C), the moving party bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record demonstrating the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107. The moving party, however, cannot discharge its initial burden under this rule with a conclusory assertion that the non-moving party has no evidence to prove its case; the moving party must specifically point to evidence of a type listed in Civ.R. 56(C), affirmatively demonstrating that the non-moving party has no evidence to support the non-moving party's claims. *Id.*; *Vahila v. Hall*, 77 Ohio St.3d 421, 1997-Ohio-259. Once the moving party discharges its initial burden, summary judgment is appropriate if the non-moving party does not respond, by affidavit or as otherwise provided in Civ.R. 56, with specific facts showing that a genuine issue exists for trial. *Dresher* at 293; *Vahila* at 430; Civ.R. 56(E).

B. *Applicable Law*

{¶11} The state may be held liable for false imprisonment of its prisoners. *Bennett v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St.3d 107, paragraph two of the syllabus. "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.' " *Id.* at 109, quoting *Feliciano v. Kreiger* (1977), 50 Ohio St.2d 69, 71, quoting 1 Harper & James, *The Law of Torts* (1956) 226, Section 3.7. The elements for wrongful imprisonment of an inmate beyond a lawful term of incarceration are: "(1) expiration of the lawful term of confinement, (2) intentional confinement after the expiration, and (3) knowledge that the privilege initially justifying the confinement no longer exists." *Corder v. Ohio Dept. of Rehab. & Corr.* (1994), 94 Ohio App.3d 315, 318.

{¶12} Here, although DRC submitted Civ.R. 56(C) material to support its motion for summary judgment, plaintiff responded with no evidence to demonstrate a genuine issue of fact for trial. The undisputed evidence thus demonstrates plaintiff was serving a term of incarceration with a May 24, 2010 release date. During that time, he was sentenced on a second offense to a six-month sentence and received 83 days of jail-time credit. Those days, subtracted from the six-month sentence that was to begin on the date plaintiff returned to the facility, resulted in a release date of July 21, 2010. Plaintiff did not submit evidence in the Court of Claims disputing the calculation the Bureau of Sentence Computation conducted; nor does plaintiff suggest DRC failed to comply with the terms of the trial court's order. Rather, plaintiff appears to contend that because he was to be released on May 24, 2010 on his first conviction, his concurrent sentence under the second conviction necessarily had the same release date.

{¶13} "[T]he imposition of a concurrent sentence normally means that the sentence being imposed is to run concurrently with the *undischarged* portion of the previously imposed sentence." (Emphasis sic.) *State ex rel. Gray v. Karnes*, 10th Dist. No. 10AP-789, 2010-Ohio-5364, ¶5, quoting *State v. Bellamy*, 181 Ohio App.3d 210, 2009-Ohio-888, quoting *Bianco v. Minor* (June 6, 2003), M.D.Pa. No. Civ.A. 303CV0913. The definition of a concurrent sentence is to be contrasted with the definition of a consecutive sentence, where the second sentence cannot begin to be served until the first sentence has been completed. *Bellamy*, citing *Richards v. Eberlin*, 7th Dist. No. 04BE-1, 2004-Ohio-2636. Accordingly, "[t]he fact that sentences run concurrently merely means that the prisoner is given the privilege of serving each day a portion of each sentence. However, if the sentences which are to run concurrently are different lengths, the prisoner cannot be discharged until he has served the longest sentence." *Brinklow v. Riveland* (Colo., 1989), 773 P.2d 517.

{¶14} Plaintiff's argument thus lacks merit. Although his sentences were to be served concurrently and the second was shorter in duration than the first, the discharge date for the second offense was after that of the first. DRC properly held plaintiff until he served the full six months on the sentence imposed on his second conviction. Because he was released on completing that sentence, he was not falsely imprisoned.

{¶15} Plaintiff's single assignment of error is overruled.

III. Disposition

{¶16} The trial court properly granted summary judgment to DRC where the undisputed evidence, submitted through DRC's affidavit supporting its summary judgment motion, demonstrated DRC applied the jail-time credit specified in the trial court's order,

granted plaintiff's jail-time credit for conveyance days, commenced his sentence on the day he returned to court, and released him in accordance with the computations based on that data. Having overruled plaintiff's single assignment of error, we affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

FRENCH and TYACK, JJ., concur.
