

[Cite as *Smith v. Ohio Dept. of Rehab. & Corr.*, 2002-Ohio-1700.]

IN THE COURT OF CLAIMS OF OHIO

DAVID SMITH

:

Plaintiff :

CASE NO. 2001-02201

v.

:

DECISION

DEPARTMENT OF REHABILITATION :  
AND CORRECTION

:

Defendant

: : : : : : : : : : :

{¶1} On January 4, 2002, defendant filed a motion for summary judgment. On February 5, 2002, plaintiff filed a “motion in opposition to summary judgment,” and an “objection to exhibit.” Defendant filed an affidavit in support of its motion. This matter is now before the court for a non-oral hearing on the motion for summary judgment.

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} “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 judgment as a matter of law. No evidence or stipulation may be considered except as stated in 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.” See, also, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff alleges that defendant is liable for “wrongful

imprisonment” by maintaining his incarceration beyond the maximum time authorized by law. Defendant counters that it had an absolute privilege to confine plaintiff in accordance with a sentencing order imposed by the Summit County Court of Common Pleas. Moreover, defendant argues that it was statutorily required to confine plaintiff pursuant to R.C. 2949.12.

{¶5} R.C. 2743.48, civil action against state for wrongful imprisonment, states in part:

{¶6} (A) As used in this section, a ‘wrongfully imprisoned individual’ means an individual who satisfies each of the following:

{¶7} (1) He was charged with a violation of a section of the Revised Code by an indictment or information prior to, or on or after, September 24, 1986, and the violation charged was an aggravated felony or felony.

{¶8} (2) He was found guilty of, but did not plead guilty to, the particular charge or a lesser-included offense by the court or jury involved, and the offense of which he was found guilty was an aggravated felony or felony.

{¶9} (3) He was sentenced to an indefinite or definite term of imprisonment in a state correctional institution for the offense of which he was found guilty.

{¶10} (4) The individual’s conviction was vacated or was dismissed, or reversed on appeal, the prosecuting attorney in the case cannot or will not seek any further appeal of right or upon leave of court, and no criminal proceeding is pending, can be brought, or will be brought by any prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation against the individual for any act associated with that conviction.

{¶11} (5) Subsequent to his sentencing and during or subsequent to his imprisonment, it was determined by a court of common pleas that the offense of which he was found guilty, including all lesser-included offenses, either was not committed by him or was not committed by any person.

{¶12} As defined in R.C. 2743.48, a wrongfully imprisoned individual is one who is guilty of an offense that is subsequently determined by a court of common pleas not to have been committed by that individual or not to have been committed by any person.

{¶13} On the other hand, the tort of false imprisonment is defined as an intentional confinement of an individual in the absence of an intervening justification, despite knowledge that the privilege initially justifying that confinement no longer exists. *Bennett v. Ohio Dept. of Rehab.*

*and Corr.* (1991), 60 Ohio St.3d 107. In the present action, it is undisputed that plaintiff committed the offenses for which he was sentenced. Therefore, plaintiff's cause of action is one sounding in false imprisonment rather than wrongful imprisonment.

{¶14} Plaintiff was admitted to prison at the Lorain Correctional Institution (LorCI) on October 19, 1995, together with his commitment papers which reflected an aggregate sentence of 2 ½ years. Defendant calculated the date of plaintiff's expiration of sentence to be May 10, 1997. However, on January 19, 1996, the sentencing court granted plaintiff a judicial release and placed him on probation.

{¶15} On August 16, 1999, the sentencing court revoked plaintiff's probation and sentenced him to an aggregate term of 5 ½ years, including a sentence for a new crime unrelated to his previous period of incarceration. On August 24, 1999, plaintiff was returned to LorCI, whereupon defendant calculated the date of plaintiff's expiration of sentence to be December 11, 2002, taking into consideration all periods of jail time credit.

{¶16} Thereafter, plaintiff filed a motion to correct the sentencing entries. On December 19, 2000, the Summit County Court of Common Pleas granted plaintiff's motion and modified his sentence. On December 22, 2000, the public defender contacted defendant regarding the court's order. However, defendant had not yet received a copy of the order from the court. After verifying an unsigned copy of the entry with the trial judge, defendant released plaintiff from incarceration on December 22, 2000.

{¶17} An action for false imprisonment may be maintained if defendant intentionally continued to confine plaintiff knowing that the privilege justifying the confinement no longer existed. *Bennett, supra*. However, defendant released plaintiff from confinement immediately upon notification from the trial court of plaintiff's corrected sentence. Inasmuch as defendant did not

{¶18} continue to confine plaintiff after it had knowledge that such privilege no longer existed, defendant's motion for summary judgment shall be granted.

JUDGE

Entry cc:

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