

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, Ohio Department of Rehabilitation and Correction (DRC), pursuant to R.C. 5120.16. Plaintiff alleges that defendants are liable for wrongful imprisonment.¹ Defendants counter that they had an absolute privilege to confine plaintiff in accordance with a sentencing order imposed by the Cuyahoga County Court of Common Pleas.

¹In his complaint, plaintiff asserts a claim for false imprisonment. However, in his February 25, 2002, response to defendants' motion to dismiss, plaintiff avers that his complaint is one sounding in wrongful imprisonment.

Moreover, defendants argue that they were 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 was found 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. 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.

{¶13} A statutory prerequisite to filing a suit for damages pursuant to R.C. 2743.48 *et seq.* is that a court of common pleas must determine that the offenses for which the complainant was found guilty, including all lesser-included offenses, either were not committed by him or were not committed by any person. R.C. 2743.48(A)(5). Additionally, the complainant may establish that he

was a wrongfully imprisoned individual by submitting to this court a certified copy of the judgment entry of the court of common pleas associated with his conviction and sentencing, and a certified copy of the entry of determination by the court of common pleas that he was a wrongfully imprisoned individual. R.C. 2743.48(E)(1). However, only upon presentation of the requisite proof to this court is a wrongfully imprisoned individual entitled to damages. R.C. 2743.48(E)(2).

{¶14} In the case *sub judice*, plaintiff has failed to provide this court with a certified common pleas court entry determining that he was wrongfully imprisoned. Therefore, judgment shall be rendered in favor of defendants with regard to plaintiff's wrongful imprisonment claims.

{¶15} Plaintiff's claim of false imprisonment may be maintained if defendants intentionally continued to confine plaintiff with the knowledge that the privilege justifying the confinement no longer existed. *Bennett, supra*. The evidence clearly shows that plaintiff was not returned to DRC's custody following his release to the Cuyahoga County Sheriff's Department for the trial court's re-sentencing hearing on May 24, 2001. Finding that defendants did not continue to confine plaintiff after they had knowledge that the privilege justifying the confinement no longer existed, judgment shall be rendered for defendants with regard to plaintiff's false imprisonment claim.

JUDGE

Entry cc:

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