

[Cite as *Green v. Ohio Dept. of Rehab. & Corr.*, 2002-Ohio-3516.]

IN THE COURT OF CLAIMS OF OHIO

ANTHONY MICHAEL GREEN :
:
Plaintiff : CASE NO. 2002-04101-WI
:
v. : ENTRY OF DISMISSAL
:
OHIO DEPARTMENT OF :
REHABILITATION AND CORRECTION :
:
Defendant :
:
: : : : : : : : : : : : : : : : : :

{¶1} On May 2, 2002, defendant filed a motion to dismiss pursuant to Civ.R. 12(B)(1). On May 15, 2002, plaintiff filed a "memorandum of plaintiff in opposition to motion to dismiss complaint and request for extension of time."

{12} The standard for dismissal pursuant to Civ.R. 12(B)(1) is whether plaintiff has alleged any cause of action which the court has authority to decide. *Avco Financial Services Loan, Inc. v. Hale* (1987), 36 Ohio App.3d 65; *Steffen v. Gen. Tele. Co.* (1978), 60 Ohio App.2d 144.

{¶3} In this case, plaintiff claims that he was wrongfully imprisoned and is entitled to compensation under R.C. 2743.48.

{¶4} R.C. 2743.48 provides in relevant part:

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

{16} "(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." (Emphasis added.)

{¶7} A person seeking compensation based on wrongful imprisonment must first obtain a determination from the 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. *Achberger v. State of Ohio* (May 8, 2001), Franklin App. No. 00AP-1008, unreported. See, also, *Walden v. State* (1989), 47 Ohio St.3d 47, 49. This determination is a mandatory prerequisite of jurisdiction for the Court. *Id.*

{¶8} Here, plaintiff seeks to recover damages in the Court of Claims, without first obtaining the determination of jurisdiction by the court of common pleas as required by R.C. 2305.02. Thus, the court is without subject matter jurisdiction to hear the case and plaintiff's claim must be dismissed.

{¶9} In the alternative, plaintiff asks the court for a thirty-day extension of time in order to secure the required determination by the court of common pleas. However, having determined that the court lacks subject matter jurisdiction, the court has no authority to grant the extension.

{¶10} For the foregoing reasons, defendant's motion is GRANTED and this case is DISMISSED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

JUDGE

Entry cc:

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