

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.

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 Lucas County Court of Common Pleas. Moreover, defendant argues that it was statutorily required to confine plaintiff pursuant to R.C. 2949.12.

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

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

(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.

(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.

(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.

(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.

(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.

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 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 a 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 offense for which he was sentenced. Therefore, plaintiff's cause

of action is one sounding in false imprisonment, rather than wrongful imprisonment.

In 1997, plaintiff was sentenced to seventeen months in prison as a result of a fourth degree felony conviction for driving under the influence of alcohol (DUI). In January 1998, the Lucas County Court of Common Pleas granted plaintiff judicial release and suspended the balance of his sentence; however, plaintiff violated the terms of his parole and was returned to prison in September 1999 to serve the remainder of his original seventeen-month sentence. As a result of plaintiff's motion to correct sentence the Lucas County Court of Common Pleas, on April 6, 2000, re-sentenced plaintiff to time-served and ordered his release from custody. Plaintiff argued, *inter alia*, that the statutory sentencing scheme prohibits a sentence in excess of one year for first-time felony DUI convictions. Plaintiff now seeks damages as a result of alleged improper sentence.

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.

Bennet, supra. However, plaintiff was not returned to defendant's custody following his re-sentence in April 2000. Finding that defendant did not continue to confine plaintiff after it had knowledge that the privilege justifying the confinement no longer existed, judgment shall be rendered for defendant.

JUDGE

To S.C. reporter 2-5-2002