

[Cite as *Garrett v. Ohio Dept. of Corr.*, 2002-Ohio-4559.]

IN THE COURT OF CLAIMS OF OHIO

ERIC GARRETT, #396-778 :
P.O. Box 8107 :
Mansfield, Ohio 44901 : Case No. 2002-01446-AD

Plaintiff : MEMORANDUM DECISION

v. :

DEPARTMENT OF CORR., etc. :

Defendant :

: : : : : : : : : : : : : : : :

For Defendant: Gregory C. Trout, Chief Counsel
Department of Rehabilitation and
Correction
1050 Freeway North
Columbus, Ohio 43229

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FINDINGS OF FACT

{¶1} 1) On or about September 24, 2001, an employee of defendant, Richland Correctional Institution, confiscated thirty-seven packs of cigarettes from the possession of plaintiff, Eric Garrett, an inmate.

{¶2} 2) Plaintiff has asserted the confiscated cigarettes were never returned and were either lost or stolen while under defendant's control.

{¶3} 3) Consequently, plaintiff filed this complaint seeking to recover \$110.26, the total cost of the cigarettes when purchased.

{¶4} 4) In a totally unrelated matter, plaintiff indicated his radio and headphones were confiscated by defendant's employee

on or about September 27, 2001. According to plaintiff, the radio and headphones were in the possession of a fellow inmate at the time the property items were confiscated.

{¶5} 5) Plaintiff alleged that although his institutional number was marked on the confiscated radio and headphones, defendant did not return the items to him. Plaintiff further alleged he was told by defendant's personnel the radio and headphones would be returned. However, plaintiff asserted the radio and headphones were lost, stolen, or misplaced while in defendant's custody.

{¶6} 6) Plaintiff claimed \$69.11 in damages for the loss of his radio and headphones. Plaintiff also claimed filing fee damages of \$25.00.

{¶7} 7) Plaintiff submitted a copy of a commissary slip dated July 27, 2001 showing he purchased ten packs of Marlboro cigarettes and ten packs of Kools cigarettes. Additionally, plaintiff submitted a copy of a second commissary receipt (date illegible) indicating he purchased ten packs of Newports cigarettes and ten packs of Kools cigarettes. Plaintiff submitted copies of titles, dated June 28, 2001 and November 24, 2000 establishing he owned a radio and a set of headphones.

{¶8} 8) Defendant acknowledged thirty-seven packs of cigarettes were confiscated from plaintiff on or about September 24, 2001. Defendant's evidence provides the confiscated cigarettes were designated as twenty-six packs of Newports, five packs of Kools, and six packs of Marlboros. Defendant denied liability for the loss of the confiscated cigarettes. Defendant has asserted the cigarettes were confiscated in the context of a rule violation (possession of contraband) and consequently this rule violation charge should have been referred to defendant's Rules Infraction Board (RIB). The possession of contraband charges were never referred to the RIB, because defendant's personnel arbitrarily decided to determine the cigarettes were contraband and order the

destruction of the confiscated property without proper authorization. Defendant has contended this court lacks jurisdiction to review decisions of the RIB and the instant claim is essentially an attempt to appeal an RIB determination which admittedly never occurred. Furthermore, defendant has argued plaintiff did not offer proof he legitimately purchased the confiscated cigarettes by brand in the amount claimed.

{¶9} 9) Furthermore, defendant has denied liability for the loss of the radio and headphones. Defendant explained a radio with headphones was confiscated from an inmate identified as Jerome Buck, #396-955 on September 16, 2001. The confiscated property was returned to Buck, "due to the absence of identifying information on the cassette to suggest otherwise." Inmate Buck was released from defendant's institution on October 6, 2001 and was not in possession of a radio and headphones at the time of his release. On October 5, 2001, plaintiff filed a theft/loss report concerning the loss of his radio and headphones. In this report plaintiff indicated his property was stolen on or about September 23, 2001. Plaintiff's radio and headphones were not recovered by defendant. Defendant has asserted plaintiff has not submitted sufficient evidence to establish he owned the headphones and radio confiscated from inmate Buck.

{¶10} 10) Plaintiff filed a response insisting he should be compensated for the loss claimed. Plaintiff contended defendant, without proper authority, destroyed the confiscated cigarettes. Plaintiff implied he rightfully owned all thirty-seven packs of cigarettes, although the confiscated cigarettes did not exactly match commissary purchases of cigarettes made by plaintiff.

{¶11} 11) Additionally, plaintiff asserted he was the rightful owner of the radio and headphones confiscated from inmate Buck. Plaintiff filed documents indicating the radio and headphones were confiscated from Buck on or about September 24, 2001 or on or about September 26, 2001. Plaintiff stated he was told by the officer

who confiscated the property from Buck that the items were placed in the institution vault. Plaintiff has not offered sufficient evidence to prove he was the owner of the radio and headphones confiscated from inmate Buck.

CONCLUSIONS OF LAW

{¶12} 1) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, held that defendant does not have the liability of an insurer (i.e., is not liable without fault) with respect to inmate property, but that it does have the duty to make "reasonable attempts to protect, or recover" such property.

{¶13} 2) Although not strictly responsible for a prisoner's property, defendant had at least the duty of using the same degree of care as it would use with its own property. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD.

{¶14} 3) Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD.

{¶15} 4) Plaintiff must produce evidence which affords a reasonable basis for the conclusion defendant's conduct is more likely than not a substantial factor in bringing about the harm. *Parks v. Department of Rehabilitation and Correction* (1985), 85-01546-AD.

{¶16} 5) Plaintiff has failed to prove, by a preponderance of the evidence, he sustained the loss of his radio and headphones as a result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶17} 6) Plaintiff has no right to pursue a claim for destroyed property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1988), 87-02540-AD; *Radford v.*

Department of Rehabilitation and Correction (1985), 84-09071. In the instant claim plaintiff has submitted sufficient proof to establish he owned the confiscated and destroyed cigarettes.

{¶18} 7) An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD.

{¶19} 8) Defendant is liable to plaintiff in the amount of \$110.26, plus the filing fee which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶20} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶21} IT IS ORDERED THAT:

{¶22} 1) Plaintiff's claim is GRANTED in part and DENIED in part;

{¶23} 2) Defendant (Department of Rehabilitation and Correction) pay plaintiff (Eric Garrett) \$135.26 and such interest as is allowed by law;

{¶24} 3) Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk