

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} In his complaint, plaintiff alleges that his rights to due process of law were violated by defendant when defendant's clerk failed to process plaintiff's appeals, resulting in dismissal. It has been consistently held that there exists no right of action against the state under Section 1983, Title 42, U.S.Code because the state is not a "person" within the meaning of Section 1983. See, e.g., *Jett v. Dallas Indep. School Dist.* (1989), 491 U.S. 701; *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App.3d 170; *White v. Chillicothe Correctional Institution* (Dec. 29, 1992), Franklin App. No. 92-AP1229. Thus, to the extent that plaintiff alleges claims for relief premised upon violations of either the Ohio or United States Constitution, this court is without jurisdiction to consider those claims. *White*, supra. Defendant is therefore, entitled to judgment, as a matter of law with respect to these claims.

{¶5} To the extent that plaintiff states a claim for negligence premised upon defendant's alleged lack of care in processing his appeal, the affidavits attached to defendant's motion for summary judgment clearly establish that plaintiff's appeal was properly handled. Moreover, the evidence submitted by defendant in support of the motion for summary judgment conclusively establishes that plaintiff's own failure to timely file his memorandum in support of jurisdiction and his own failure to timely file his notice of appeal were the sole reasons for the dismissal of his appeals.

{¶6} Accordingly, upon review of defendant's motion for summary judgment and the memoranda filed by the parties, and construing the facts in a light most favorable to plaintiff, the court finds that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law. Accordingly, defendant's motion for summary judgment is GRANTED. Additionally, for the reasons stated above, plaintiff's motion for summary judgment is DENIED.

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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