

[Cite as *Chambers v. Lima Correctional Inst.*, 2003-Ohio-4160.]

IN THE COURT OF CLAIMS OF OHIO

TIMMY CHAMBERS :
Plaintiff : CASE NO. 2002-09544
v. : DECISION
LIMA CORRECTIONAL INSTITUTION : Judge J. Warren Bettis
Defendant :
: : : : : : : : : : : : : : : :

{¶1} On June 30, 2003, defendant filed a motion for summary judgment. Plaintiff has not filed a response. The case is now before the court for a non-oral hearing on the motion for summary judgment. Civ.R. 56(C) and L.C.C.R. 4.

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "*** Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written 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} It is not disputed that plaintiff was in the custody of defendant at defendant's Lima Correctional Institution at all times relevant to this action. In plaintiff's complaint, plaintiff alleges that he was held by defendant beyond his lawful term of incarceration. Defendant contends that plaintiff was confined pursuant to a lawful order of incarceration.

{¶5} "False imprisonment occurs when a person confines another intentionally 'without lawful privilege and against his consent within a limited area for any appreciable time ***.'" *Bennett v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St.3d 107, citing *Teliciano v. Kreiger* (1977), 50 Ohio St.2d 69, 71. However, "an action for false imprisonment cannot be maintained where the wrong complained of is imprisonment in accordance with the judgment or order of a court, unless it appear that such judgment or order is void." *Id.*

{¶6} In support of the motion for summary judgment, defendant submitted the affidavit of Mary Oakley, an employee of defendant's Bureau of Sentence Computation. Oakley's affidavit provides in relevant part:

{¶7} "I have reviewed the sentence computation of inmate Timothy Chambers, #408-954, and have personal knowledge of the facts and circumstances surrounding the computation.

{¶8} "Mr. Chambers was indicted for breaking and entering (R.C. 2911.13), theft (R.C. 2913.02), and escape (R.C. 2921.34). True and accurate copies of the true bills contained in DRC's files are attached as Exhibits A-1, A-2, and A-3.

{¶9} "On August 22, 2001, Mr. Chambers was sentenced in Cuyahoga County on two different case numbers. On case #CR396896,

he was sentenced to one year for escape. A true and accurate copy of the journal entry filed on August 28, 2001 is attached as Exhibit A-4. Since the journal entry was silent as to how the sentence was to run, Ohio Revised Code 2929.14(E)(2) was followed and it was run consecutively with case #CR400380. Mr. Chambers was given credit for jail time served of 246 days.

{¶10} "On case #CR400380, Mr. Chambers was sentenced to 6 months for breaking and entering. The second count (theft) was nolle. A true and accurate copy of the journal entry filed on August 28, 2001 is attached as Exhibit A-5. Mr. Chambers was given 246 days jail time credit. This credit was duplicate credit per Ohio Administrative Code Section 5120-2-04.

{¶11} "Attached as Exhibit A-6 is a true and accurate copy of the calculation of Mr. Chambers' jail time credit.

{¶12} "Mr. Chambers' aggregate sentence was 18 months, with 246 days jail time credit and a release date of 6/25/02.

{¶13} "Mr. Chambers was admitted to the Department of Rehabilitation and Correction (DRC) on August 29, 2001 to begin his sentence.

{¶14} "Revised journal entries were received by DRC on 2/5/02 ordering Mr. Chambers' sentences to run concurrently. True and accurate copies of these two journal entries are attached as Exhibits A-7 and A-8. Mr. Chambers' sentence was changed from consecutive to concurrent and he was released the same day."

{¶15} R.C. 2929.14(E)(1)(b)(2) provides in relevant part:

{¶16} "**** if an offender who is an inmate in a jail, prison, or other residential detention facility or is under detention at a detention facility commits another felony while the offender is an escapee in violation of section 2921.34 of the Revised Code, any prison term imposed upon the offender for one of those violations shall be served by the offender consecutively to the prison term or

term of imprisonment the offender was serving when the offender committed that offense and to any other prison term previously or subsequently imposed upon the offender."

{¶17} As stated above, plaintiff has not responded to defendant's motion for summary judgment.

{¶18} The Tenth District Court of Appeals has stated:

{¶19} "The moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of fact on a material element of one or more of the nonmoving party's claims for relief. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292. If the moving party satisfies this initial burden by presenting or identifying appropriate Civ.R. 56(C) evidence, the nonmoving party must then present similarly appropriate evidence to rebut the motion with a showing that a genuine issue of material fact must be preserved for trial. *Norris v. Ohio Standard Oil Co.* (1982), 70 Ohio St.2d 1, 2. The nonmoving party does not need to try the case at this juncture, but its burden is to produce more than a scintilla of evidence in support of its claims. *McBroom v. Columbia Gas of Ohio, Inc.* (June 28, 2001), Franklin App. No. 00AP-1110." *Nu-Trend Homes, Inc. et al. v. Law Offices of DeLibera, Lyons & Bibbo et al.*, Franklin App. No. 01AP-1137, 2003-Ohio-1633.

{¶20} In light of the standard of review, the court finds that the only conclusion to be drawn from the undisputed evidence set forth above is that defendant was under a legal obligation to confine plaintiff until it received the revised journal entry from the sentencing court. Consequently, defendant did not falsely imprison plaintiff, as a matter of law.

{¶21} Defendant's motion for summary judgment is hereby GRANTED and judgment is rendered in favor of defendant.

{¶22} A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. 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.

J. WARREN BETTIS
Judge

Entry cc:

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LP/cmd
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