



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} Plaintiff alleges that defendant is liable for false imprisonment by maintaining plaintiff's incarceration beyond his lawful term. The tort of false imprisonment is defined as an intentional confinement of an individual in the absence of an intervening justification, despite knowledge that the privilege initially justifying the confinement no longer exists. *Bennett v. Ohio Dept. of Rehab. and Corr.*(1991), 60 Ohio St.3d 107. Defendant counters that it had an absolute privilege to confine plaintiff in accordance with a sentencing order imposed by the Franklin County Court of Common Pleas.

{¶5} In the present action, it is undisputed that plaintiff committed the offenses for which he was sentenced. The parties agreed that the material facts are not in dispute. The primary issue before the court is a question of law; that is, whether or not defendant was required to apply the statutory language contained in R.C. 2929.41(A) when it computed the expiration date of plaintiff's sentence.

{¶6} In April 1998, Judge Holschuh of the United States District Court for the Southern District of Ohio, Eastern Division sentenced plaintiff to ten months in federal prison for violation of supervised release on a weapons charge. After sentencing,

plaintiff remained incarcerated in the local county jail and appeared in Franklin County Common Pleas Court to answer a burglary charge. Plaintiff was sentenced by Judge Travis on May 14, 1998, to a term of two years for the burglary offense. The court's entry did not specifically state whether this sentence was to run consecutively or concurrently with the ten-month federal sentence; however, prior to sentencing Judge Travis was aware that plaintiff was a federal prisoner. (See Defendant's Exhibit 6.) The court also granted plaintiff 50 days of jail time credit earned prior to the May 14, 1998, sentencing date. Plaintiff remained in the Franklin County Jail until June 2, 1998, when federal marshals transported him to the Beckley Federal Correctional Institution in West Virginia. A detainer was prepared by the Franklin County Sheriff's Office and sent to West Virginia to ensure plaintiff was returned to Ohio upon completion of the federal sentence. Plaintiff completed his federal sentence on December 30, 1998, and he was held in the West Virginia Regional Jail pending his release to Ohio. On January 20, 1999, plaintiff was returned to the Franklin County Corrections Center (FCCC) and on February 26, 1999, he was received at defendant's Corrections Reception Center (CRC).

{¶7} Personnel employed by defendant, the Ohio Department of Rehabilitation and Corrections (DRC), initially calculated plaintiff's expiration of sentence date (ESD) to be March 24, 2000. (Defendant's Exhibits 12 and 13.) DRC noted the definite sentence of two years with 50 days of jail time credit, pursuant to the May 14, 1998, sentencing entry. Defendant then contacted the Franklin County Sheriff's Office to verify that plaintiff was actually incarcerated from the sentencing date to the date plaintiff was brought to CRC. According to Defendant's Exhibit 14, a representative from FCCC related that plaintiff was incarcerated from January 20, 1999, to February 26, 1999. DRC then changed its

records to reflect a start date of February 26, 1999, with 50 days jail time credit resulting in an ESD of January 5, 2001. However, DRC recognized that this formula did not credit plaintiff with the time that he had served in jail between January 20, 1999, and the time before he was sent to CRC. Defendant thereupon decided to contact the sentencing judge and wrote a letter that requested verification of Stroud's county incarceration. (See Defendant's Exhibit 16.) According to another of defendant's exhibits, a handwritten note on a copy of defendant's March 5, 1999, letter conveys that the bailiff for Judge Travis relayed the message that "50 days is correct [plaintiff] not entitled to days between May 14, 1998 and February 26, 1999." (Defendant's Exhibit 16.) Defendant also submitted another copy of the same letter (Defendant's Exhibit 19) which contained a handwritten note, that reads:

{¶8} "4-16-99, Franklin Co. Prosecutor to have judge send entry granting fed. time served."

{¶9} By this time, plaintiff had been transferred from CRC to Orient Correctional Institution (OCI). (See Defendant's Exhibit 12.) Meanwhile, plaintiff had filed a motion requesting credit for his time in jail totaling 337 days. On July 21, 1999, Judge Travis issued a decision declaring plaintiff was entitled to an additional 58 days credit for the time he was in Franklin County detention prior to being transported to West Virginia and after being returned from West Virginia, but that the time spent under federal detention could not be credited against the state sentence. Judge Travis based his decision on the language contained in R.C. 2967.191, which states the following:

{¶10} "The department of rehabilitation and correction shall reduce the stated prison term of a prisoner \*\*\* by the total number of days that the prisoner was confined for any reason *arising out*

of the offense for which the prisoner was convicted and sentenced, including confinement in lieu of bail while awaiting trial, confinement for examination to determine the prisoner's competence to stand trial or sanity, and confinement while awaiting transportation to the place where the prisoner is to serve the prisoner's prison term." (Emphasis added.)

{¶11} When defendant received a copy of that decision, it again adjusted plaintiff's records to reflect an ESD of November 8, 2000.

Plaintiff continued to petition the sentencing court for credit for the time he had served in federal custody.<sup>1</sup> However, plaintiff's motions were overruled by Judge Travis. In January 2000, plaintiff filed a writ of habeas corpus wherein he referenced R.C. 2929.41(A) and asserted that the state sentence was imposed to run concurrently with the federal penalty. Plaintiff cited *Hamilton v. Adkins* (1983), 10 Ohio App.3d 217, wherein the court held "\*\*\* the imposition of consecutive sentences could only be accomplished if the trial court specified that the sentences were to run consecutively. When the appellant was sentenced, the trial court failed to explicitly impose consecutive sentences. By its vague and indefinite sentencing, the trial court provided considerable uncertainty as to the length of the sentence to be served by the appellant. Where there is an ambiguity in the language as to whether the sentences are to be served concurrently or consecutively, a defendant is entitled to have the language construed in his favor."

{¶12} Since there was no specific designation by Judge Travis that the sentences were to be served consecutively, plaintiff argued that his Ohio sentence was running while he was in federal custody. On June 1, 2000, the Fourth District Court of Appeals

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Plaintiff admits he incorrectly argued the issue as one for jail time credit as opposed to concurrent sentencing.

found in favor of plaintiff and ordered his immediate release from defendant's custody. Plaintiff was released on June 2, 2000. Plaintiff filed the instant action in January 2001 seeking money damages for the days during which he claims he was falsely imprisoned by defendant.

{¶13} Defendant insists that it was required to hold plaintiff based on the second order from Judge Travis denying plaintiff jail time credit pursuant to R.C. 2967.191 for federal time served. Defendant maintains that it had no discretion and that it was bound by the entry of the court pursuant to the holding of *State ex rel. Corder v. Wilson* (1991), 68 Ohio App.3d 567.

{¶14} Upon review, the court finds defendant's argument is not persuasive. As explained by Judge Kline, in *Stroud v. Lazaroff* (June 1, 2000), Pickaway App. No. 00 CA 09, "\*\*\*\* Jail time credit pursuant to R.C. 2967.191 is distinguishable from the issue of whether sentences should be served consecutively or concurrently pursuant to R.C. 2929.41. The trial court's denial of jail credit time is not *res judicata* on the issue of whether the [sic] Stroud's sentence should have been served consecutive to or concurrently with his imprisonment in federal prison. \*\*\* the Franklin County Court of Common Pleas sentenced Stroud to two years, a month after the ten month sentence imposed by the federal court on April 10, 1998. Therefore, pursuant to the language of R.C. 2929.41, Stroud's term [must be served concurrently]."

{¶15} In *Corder*, supra, the court stated that "The law has been and is still clear that, although the Adult Parole Authority is the body who credits the time served, it is the sentencing court who makes the determination as to the amount of time served by the prisoner before being sentenced to imprisonment in a facility under the supervision of the Adult Parole Authority." While the ruling in *Corder*, supra, does restrict defendant's discretion in

interpreting the trial court's order, the constraint is limited to applying the number of days allowed under R.C. 2967.191. It does not absolve defendant of its obligation to ascertain the accurate ESD. Defendant initially calculated the correct ESD based on the two-year definite sentence and 50 days jail time credit. In this case, however, DRC neglected its statutory duty under R.C. 2929.41 and failed to follow the original sentencing entry of May 14, 1998.

{¶16} R.C. 2929.41 addresses multiple sentences as follows:

{¶17} "(A) Except as provided in division (B) of this section, division (E) of section 2929.14, or division (D) or (E) of section 2971.03 of the Revised Code, a sentence of imprisonment shall be served concurrently with any other sentence of imprisonment imposed by a court of this state, another state, or the United States. Except as provided in division (B)(2) of this section, a sentence of imprisonment for misdemeanor shall be served concurrently with a prison term or sentence of imprisonment for felony served in a state or federal correctional institution."

{¶18} Defendant also maintains that it had a right to confine plaintiff after March 24, 2000, because plaintiff completed his federal sentence before the state penalty commenced. In essence, defendant reasons that plaintiff did not begin serving his state sentence until he was admitted to the state corrections facility on February 26, 1999. The court finds this argument to be unavailing. "Concurrent sentences are two or more sentences of jail time to be served simultaneously. *State v. Walker* (May 8, 2000), Clermont App. No. CA99-09-086. Where concurrent sentences are imposed, all or part of each term of imprisonment is served simultaneously \*\*\*." *Rogers v. Brigano* (December 17, 2001), Warren App. No. CA99-06-059. Thus, plaintiff commenced serving his two-year sentence on May 14, 1998. With a definite sentence of two years and 50 days jail time credit, and pursuant to the clear

mandate of R.C. 2929.41(A), defendant's privilege to confine plaintiff terminated on March 24, 2000. It is clear to this court that by continuing to miscalculate plaintiff's ESD, defendant set in motion the chain of events which compelled plaintiff to seek clarification of the correct sentence. Had defendant simply verified that plaintiff was never released from detention, the ESD would have remained as March 24, 2000, and plaintiff would not have been forced to petition the court for relief. Upon review of the cross-motions for summary judgment and the memoranda filed by the parties, and construing the facts in a light most favorable to defendant, the court finds that no genuine issues of material fact exist and that plaintiff is entitled to judgment as a matter of law. Accordingly, plaintiff's motion for summary judgment is GRANTED and defendant's motion is DENIED.

{¶19} The parties are not in agreement concerning the number of days of confinement for which plaintiff can be compensated. Plaintiff contends that since he was awarded 108 days of jail time credit (50 days served prior to May 14, 1998, plus 58 served between May 14 and June 2, 1998, and between January 20 and February 26, 1999), his ESD was January 26, 2000. However, defendant correctly points out that if this court grants plaintiff the additional 58 days, that would amount to double credit since the time was spent in custody *after* the May 14, 1998, sentencing date. Therefore, based on the testimony and evidence produced at plaintiff's damages trial, the court finds that plaintiff was falsely imprisoned and is entitled to compensation for 70 days, from March 24, 2000, through June 2, 2000.

{¶20} R.C. 2743.48(E)(2) entitles an innocent person who is found to be wrongfully imprisoned under that statute to receive compensation equaling the total of each of the following amounts:

{¶21} "(a) \*\*\*;

{¶22} "(b) For each full year that he was imprisoned in the state correctional institution for the offense of which he was found guilty, twenty-five thousand dollars, and for each part of a year that he was so imprisoned, a pro-rated share of twenty-five thousand dollars;

{¶23} "(c) Any loss of wages, salary, or other earned income that directly resulted from his arrest, prosecution, conviction, and wrongful imprisonment."

{¶24} In the instant action, plaintiff concedes that he is not a "wrongfully imprisoned" individual as that term is defined in R.C. 2743.48. Consequently, plaintiff's damages for false imprisonment are to be determined in accordance with the common law rather than the statutory framework of R.C. 2743.48(E)(2). *Corder v. Ohio Dept. of Rehab. & Corr.* (1996), 114 Ohio App.3d 360. However, the court may consider R.C. 2743.48 in determining the amount of plaintiff's damages, which may include compensation for loss of freedom and emotional distress. *Corder*, at 366. See, also, *Clark v. Ohio Dept. of Rehab. and Corr.* (1999), 104 Ohio Misc.2d 14; *Rainey v. Lorain Correctional Facility* (1997), 121 Ohio App.3d 428. According to the transcript of the damages trial, plaintiff offered testimony regarding the despondency he experienced while trying to effectuate his release from custody. Plaintiff described acts of violence that he witnessed committed by and upon other inmates. Plaintiff related that not only did his girlfriend become disillusioned when his anticipated release date passed, but plaintiff began to question himself. Upon review, the court finds that plaintiff's testimony was sufficient to justify an award of \$4,795 for the 70 days he was falsely imprisoned.

{¶25} Plaintiff is also entitled to compensation for lost income that he sustained as a result of his improperly prolonged confinement. *Clark*, supra, at 17. At trial, plaintiff presented

paycheck stubs and W-2 forms documenting that 12 days after his release he obtained employment loading trucks for an hourly wage and incentive pay. Plaintiff eventually left that job and began to work for a contractor, painting and hanging drywall. Plaintiff provided sufficient credible evidence to show that, on average, he worked 30 hours per week making approximately \$10 per hour. Therefore, the court finds that plaintiff has proven by a preponderance of the evidence that he is entitled to \$3,000 for lost wages, which represents ten weeks of lost income at \$10 per hour, for 30 hours per week.

{¶26} In addition, the court in *Clark*, supra, held that the attorney fee provision in R.C. 2743.48(F) was not applicable since plaintiff was not a wrongfully imprisoned individual. The court also noted "the general rule is that attorney fees cannot be taxed as costs of the action absent specific statutory authority. *Sorin v. Warrensville Hts. School Dist. Bd of Edn.* (1976), 46 Ohio St.2d 177, \*\*\*." Accordingly, the court finds that plaintiff is not entitled to payment of attorney fees. Finally, the court notes that plaintiff failed to submit evidence concerning any additional costs incurred to bring this action.

{¶27} Therefore, the court finds plaintiff has proven by a preponderance of the evidence that he is entitled to an award in the total amount of \$7,820 for his false imprisonment, which includes the \$25 filing fee paid by plaintiff. Judgment shall be rendered in favor of plaintiff.

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EVERETT BURTON  
Judge

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