

IN THE COURT OF CLAIMS OF OHIO

CHRISTOPHER D. BELL :
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 Plaintiff :
 :
 v. : CASE NO. 2002-10691-AD
 :
 OHIO DEPARTMENT OF : ENTRY OF DISMISSAL
 REHABILITATION AND CORRECTION :
 :
 Defendant :
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{¶1} THE COURT FINDS THAT:

{¶2} 1) On December 9, 2002, plaintiff, Christopher D. Bell, filed a complaint against plaintiff, Ohio Department of Rehabilitation and Correction. Plaintiff alleges on July 31, 2001, defendant’s agent unlawfully confiscated his walkman. Plaintiff was ordered to send the walkman to someone on his approved list at defendant’s expense. Plaintiff refused. Subsequently, plaintiff was found guilty of disobeying a direct order by the Rules Infraction Board and his walkman was sent out of the institution. Plaintiff contends the internal rules concerning a walkman should not apply to him since he possessed the walkman prior to the adoption of the rule. Consequently, plaintiff seeks damages in the amount of \$1,056.00, \$55.00 for the value of the walkman, \$1.00 for nominal damages and \$1,000.00 for compensatory damages. Plaintiff’s claim for \$1,000.00 for punitive damages was dismissed by this court’s pre-screening entry of December 11, 2002;

{¶3} 2) On April 7, 2003, defendant filed a motion to dismiss;

{¶4} 3) In support of the motion to dismiss, defendant stated in pertinent part:

{¶5} “In the present case, the Rules Infraction Board ordered the plaintiff’s portable cassette player mailed out of the institution at its expense upon finding the plaintiff guilty of a Class II Rule 1 violation (Exhibit B). The plaintiff’s complaint appeals to this Court the decisions of the Rules Infraction Board, Warden, and Director. Therefore, lack of

subject matter jurisdiction is applicable and the complaint should be dismissed.

{¶6} “Moreover, this Court has held previously that an inmate has no right to assert a claim for contraband property he had no right to possess. *McFarland v. Ohio Department of Rehabilitation and Correction* (1989), Case No. 89-07140-AD. The plaintiff’s complaint should be dismissed because he has set forth a claim upon which no relief can be granted by this Court. The portable cassette player was contraband lawfully confiscated by the defendant. Under this Court’s precedent, the plaintiff has no right to a recovery for the mere fact that property he possessed was contraband confiscated lawfully by the defendant.”;

{¶7} 4) On May 30, 2003, plaintiff filed a response to defendant’s motion to dismiss;

{¶8} 5) In support of the response, plaintiff in pertinent part stated:

{¶9} “There is no doubt that the Defendants purposefully and negligently misapplied the Ohio Administrative Codes to deprive the plaintiff of property through misuse of the Disciplinary procedure . . .

{¶10} “The Defendants continuously speak the false allegation of contraband, but still fail to present an exhibit demonstrating a contraband charge . . .

{¶11} “OAC §5120-9-33 stipulates and implements the Grand Father Clause which narattes [sic] the fact that prisoners will be allowed to maintain legitimately [sic] owned property. Neither OAC differentiates the function of a walkman nor a radio.”;

{¶12} 6) Plaintiff’s walkman was sent out of the institution to a person on plaintiff’s approved list at no cost to plaintiff.

{¶13} THE COURT CONCLUDES THAT:

{¶14} 1) O.A.C. 5120-9-33(I) and (J) state:

{¶15} “(I) The director or designee may grant a warden’s written request to include or exclude certain items of personal property based on the security, safety, space, control or other needs of a particular institution or individual. Approved institutional changes will be communicated in writing to the chief inspector and posted in the affected institution(s) as appropriate.

{¶16} “(J) With the exception of any property excluded pursuant to paragraph (I) of this rule, inmates who legitimately possess personal property prior to the effective date of this rule may be permitted to retain (grandfather) said property until such time as said property becomes unusable. Institutional staff will ensure that any inmate’s personal property being transferred to or received from another state correctional facility conforms to the 2.4 cubic foot limitation.”;

{¶17} 2) A general rule of the jurisdiction of this court is that the court does not have jurisdiction over decisions of the Rules Infraction Board of the Department of Rehabilitation and Correction. *Sears v. Department of Rehabilitation and Correction* (1975), 75-0170-AD; *Maynard v. Jaco* (1977), 76-0581-AD;

{¶18} 3) Plaintiff seeks to appeal a decision rendered by the Rules Infraction Board concerning contraband property. Plaintiff has no right to assert a claim for contraband property he has no right to possess. *Beavers v. Department of Rehabilitation and Correction* (1988), 87-02540-AD;

{¶19} 4) Based on the above holdings, plaintiff’s claim is DISMISSED.

{¶20} IT IS ORDERED THAT:

{¶21} Defendant’s motion to dismiss is GRANTED. Plaintiff’s case is DISMISSED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this entry and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Christopher D. Bell, #240-363
5701 Burnett Road
Leavittsburg, Ohio 44430

Plaintiff, Pro se

Stephen Young, Legal Counsel
Department of Rehabilitation
and Correction

For Defendant

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ENTRY

1050 Freeway Drive North
Columbus, Ohio 43229

DRB/laa

7/29

File 9/10/03

Sent to S.C. reporter 10/3/03