

[Cite as *Nix v. Grafton Correctional Inst.*, 2003-Ohio-939.]

IN THE COURT OF CLAIMS OF OHIO

WILLIE L. NIX, #176-740 :
2500 South Avon-Belden Road :
Grafton, Ohio 44044 : Case No. 2002-07517-AD

Plaintiff : ORDER DISMISSING
PLAINTIFF'S CASE

v. :

GRAFTON CORRECTIONAL :
INSTITUTION :

Defendant :

: :

For Defendant: Stephen A. Young, Staff Counsel
Department of Rehabilitation and
Correction
1050 Freeway Drive North
Columbus, Ohio 43229

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{¶1} THE COURT FINDS THAT:

{¶2} 1) On August 12, 2002, plaintiff, Willie Nix, filed a complaint against defendant, Grafton Correctional Institution. Plaintiff alleges on or about October 17, 1996, property items were taken from him and were declared contraband. Plaintiff asserts these items were either lost prior to mailing home or during the mailing home process. Plaintiff seeks damages in the amount of \$138.00;

{¶3} 2) On November 18, 2002, defendant filed a motion to dismiss;

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

{¶5} "Plaintiff filed this complaint in the Court of Claims on

August 12, 2002. According to R.C. 2743.16, a civil action against the state shall be commenced no later than two years after the date of accrual of the cause of action. According to information provided by Plaintiff, it is clear that the loss occurred and, therefore, this cause of action accrued within a few days of October 17, 1996. Plaintiff's complaint was filed more than two years thereafter.";

{¶16} 4) Plaintiff did not respond to defendant's motion to dismiss.

{¶17} THE COURT CONCLUDES THAT:

{¶18} 1) R.C. 2743.16(A) in pertinent part states:

{¶19} ". . . civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties.";

{¶10} 2) In the case at bar, plaintiff filed his complaint more than two years after the accrual of the cause of action;

{¶11} 3) Civil R. 12(H) in pertinent art states:

{¶12} "(2) A defense of failure to state a claim upon which relief can be granted . . . may be made in any pleading permitted . . .

{¶13} "(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."

{¶14} IT IS ORDERED THAT:

{¶15} 1) Defendant's motion to dismiss is GRANTED;

{¶16} 2) Plaintiff's case is DISMISSED;

{¶17} 3) Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

DRB/laa
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