

IN THE COURT OF CLAIMS OF OHIO

DEE EMMETT CARTER :
:
Plaintiff : CASE NO. 2003-11437
Judge Joseph T. Clark
v. :
ENTRY GRANTING DEFENDANT'S
DEPARTMENT OF REHABILITATION : MOTION FOR SUMMARY JUDGMENT
AND CORRECTION :
Defendant :

{¶1} By entry dated February 4, 2004, the court elected to convert defendant's December 16, 2003, motion to dismiss to a motion for summary judgment. The case is now before the court for a non-oral hearing upon defendant's 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} In the instant action plaintiff seeks monetary damages from defendant for 120 days he served in prison under the original sentencing entry before defendant received notice of a subsequent entry from the Court of Appeals reducing plaintiff's sentence. In the motion for summary judgment, defendant contends that plaintiff's claim is barred by the doctrine of res judicata. In support of that contention, defendant has attached to its motion, a copy of an "entry granting defendant's motion for summary judgment" issued on August 30, 2001, in case No. 2000-10839, captioned as *Carter v. Dept. of Rehab. & Corr.* Upon review of this court's prior decision in Case No. 2000-10839, it is clear that plaintiff's current action is based upon the same set of facts alleged in the prior case.

{¶5} The doctrine of res judicata holds that a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action. *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 1995-Ohio-331.

{¶6} In the instant case, there can be no reasonable dispute that plaintiff's claim against defendant was previously dismissed by this court on the merits. Consequently, res judicata bars plaintiff from pursuing the claim for a second time in this case.

{¶7} In short, 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 no genuine issues of material fact exist and that defendant is entitled to judgment as a matter of law. Defendant's motion for summary judgment is hereby GRANTED. 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.

JOSEPH T. CLARK
Judge

Entry cc:

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LP/cmd

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