

[Cite as Smith v. Ohio Dept. of Corr. & Rehab., 2004-Ohio-1922.]

IN THE COURT OF CLAIMS OF OHIO

KENNIE J. SMITH :
Plaintiff : CASE NO. 2003-07472
v. : Judge J. Warren Bettis
DECISION
DEPARTMENT OF REHABILITATION :
AND CORRECTIONS :
Defendant :
: : : : : : : : : : : : : : : :

{¶1} On October 14, 2003, the court sua sponte converted defendant's motion to dismiss to a motion for summary judgment. In accordance with the court's November 19, 2003, entry, defendant filed a supplemental memorandum in support of the motion and the affidavit of Mickie Rigsby on December 5, 2003. On December 31, 2003, plaintiff filed a response to defendant's motion. The case is now before the court for a non-oral hearing. 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 Lorain 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. More specifically, plaintiff alleges that defendant failed to credit plaintiff with jail-time served.

{¶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. 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 appears that such judgment or order is void." *Id.*

{¶6} The affidavit of Mickie Rigsby, an employee of defendant's Bureau of Sentence Computation, sets forth plaintiff's conviction and sentencing history in great detail, including jail-time credit. Plaintiff does not dispute that his 16-month sentence in Case No. 407372 determined his release date. See Ohio Adm.Code 5120-2-04(F). Rather, plaintiff argues that he was not credited with the full amount of jail-time served for that conviction.

{¶7} Upon review of Rigsby's affidavit and the documents attached thereto, the court finds that the dispute regarding the

jail-time credit stems from an obviously erroneous determination by the Cuyahoga County Sheriff's Department stating that plaintiff served 143 days in jail on Case No. 407372 from April 5, 2001, to July 25, 2001. Inasmuch as there are only 111 days between April 5, 2001, and July 25, 2001, it is mathematically impossible for plaintiff to have served 143 days in jail during that time period.

{¶8} Therefore, upon review of the motion, memoranda, and evidentiary materials submitted with the motion, the court finds that the only conclusion to be drawn from the evidence is that plaintiff was properly credited with the jail-time that he actually served and that he was timely released at the expiration of his sentence. Consequently, and as a matter of law, defendant did not falsely imprison plaintiff.

{¶9} Defendant's motion for summary judgment shall be granted and judgment shall be rendered in favor of defendant.

{¶10} 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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