

[Cite as *Starcher v. Ohio Dept. of Rehab. & Corr.*, 2004-Ohio-308.]

**IN THE COURT OF CLAIMS OF OHIO**

DONALD STARCHER :

Plaintiff : CASE NO. 2003-03965

v. : Judge J. Warren Bettis

DEPARTMENT OF REHABILITATION : DECISION

AND CORRECTION :

Defendant :

.....

{¶1} On November 24, 2003, the court granted defendant's motion for leave to file a motion for summary judgment instanter. Plaintiff has not filed a memorandum in opposition to defendant's motion for summary judgment. The case is now before the court for a non-oral hearing on the 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 his amended complaint, plaintiff alleges that he was imprisoned by defendant beyond his lawful term; more specifically, plaintiff alleges that defendant failed to properly credit him for jail-time served.

{¶5} In the motion for summary judgment, defendant argues that plaintiff's claim was not timely filed. R.C. 2743.16(A) provides in relevant part:

{¶6} “\*\*\* 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 the accrual of the cause of action *or within any shorter period that is applicable to similar suits between private parties.*” (Emphasis added.) Thus, the applicable statute of limitations for a cause of action which alleges false imprisonment is R.C. 2305.11(A), and it requires an action for false imprisonment to be commenced within one year after its accrual. *Mickey v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 02AP-539, 2003-Ohio-90; *Haddad v. Dept. of Rehab. & Corr.*, Franklin App. No. 01AP-1130, 2002-Ohio-2813; *Haller v. Borror* (June 14, 1994), Franklin App. No. 93APE12-1657.

{¶7} The exhibits attached to defendant's motion for summary judgment establish that plaintiff began making inquiries about his jail-time credit as early as August 2000; that on August 23, 2000, he was informed that jail-time credit was not included as part of the sentencing entry; and that he was advised on August 23, 2000, to write to the sentencing judge for a determination of his jail-time credit. It is also undisputed that plaintiff was released by defendant on September 25, 2000, re-incarcerated for a post-release control violation, and then released a second time on January 10, 2002. Plaintiff's complaint was not filed until March 24, 2003.

{¶8} As a general rule, a claim for false imprisonment accrues upon plaintiff's release from confinement. *Haddad*, supra. Consequently, even if the court were to find that plaintiff's claim for false imprisonment accrued upon his final release on January 10, 2002, his complaint was not filed within one year thereafter. Thus, plaintiff's claim is barred by the one-year statute of limitations and defendant is entitled to judgment as a matter of law.

{¶9} As stated above, plaintiff has not responded to defendant's motion for summary judgment. In light of the standard of review under Civ.R. 56(C), the court finds that the only reasonable conclusion to be drawn from the undisputed evidence set forth above is that defendant is not liable to plaintiff, as a matter of law. Therefore, 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.

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J. WARREN BETTIS  
Judge

Entry cc:

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