

[Cite as *Thomas v. Ohio State Penitentiary*, 2004-Ohio-5139.]

IN THE COURT OF CLAIMS OF OHIO

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|-------------------------|---|----------------------------|
| DALON A. THOMAS | : | |
| Plaintiff | : | |
| v. | : | CASE NO. 2004-05627-AD |
| OHIO STATE PENITENTIARY | : | <u>MEMORANDUM DECISION</u> |
| Defendant | : | |

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FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Dalon A. Thomas, an inmate incarcerated at defendant, Ohio State Penitentiary (OSP), has alleged his walkman radio/cassette player was confiscated by OSP employee, Officer Cordell on March 19, 2003. Plaintiff related the confiscated radio/cassette player was never returned to him.

{¶ 2} 2) Consequently, plaintiff filed this complaint seeking to recover \$43.00, the replacement value of the walkman, plus \$25.00 for filing fee reimbursement. The requisite material filing fee was paid.

{¶ 3} 3) Defendant has no record of a radio/cassette player being confiscated from plaintiff on March 19, 2003. Defendant contended plaintiff failed to produce sufficient evidence to establish his property was confiscated.

{¶ 4} 4) Plaintiff insisted his radio/cassette player was confiscated by Officer Cordell during a shakedown search on March 19, 2003.¹

CONCLUSIONS OF LAW

{¶ 5} 1) Although not strictly responsible for a prisoner's property, defendant had at least

¹ Plaintiff filed a response on July 26, 2004.

the duty of using the same degree of care as it would use with its own property. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD.

{¶ 6} 2) Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD.

{¶ 1} 3) Plaintiff must produce evidence which affords a reasonable basis for the conclusion defendant's conduct is more likely than not a substantial factor in bringing about the harm. *Parks v. Department of Rehabilitation and Correction* (1985), 85-01546-AD.

{¶ 2} 4) Plaintiff's failure to prove delivery of a radio/cassette player to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant with respect to stolen or lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD.

{¶ 3} 5) Plaintiff has failed to prove, by a preponderance of the evidence, his radio/cassette player was lost as a proximate result of any negligent conduct attributable to defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

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OHIO STATE PENITENTIARY :

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ENTRY OF ADMINISTRATIVE
DETERMINATION

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Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, 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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Dalon A. Thomas, #324-811
878 Coitsville-Hubbard Road
Youngstown, Ohio 44505

Plaintiff, Pro se

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

For Defendant

RDK/laa
8/19
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