



{¶ 3} Plaintiff has contended defendant should bear liability for the replacement value of property destroyed pursuant to a valid forfeiture order. Plaintiff, therefore, filed this complaint seeking to recover \$1,150.38, the estimated replacement value of the destroyed forfeited property, plus \$25.00 for filing fee reimbursement. Furthermore, plaintiff claimed \$500.00 for inconvenience and \$5.58 for copying and postage. Inconvenience, copying costs, and postage expenses are not recognizable damage elements in a claim of this type. These damage claims shall be deemed dismissed and will not be addressed further. Plaintiff's total damage claim amounts to \$1,150.38.

{¶ 1} Defendant filed an investigation report asserting plaintiff's claim should be denied since he was given the choice to have his property sent home or destroyed. Plaintiff failed to act on this request and his property was subsequently destroyed. On September 10, 2004, plaintiff filed a response to defendant's investigation report. Plaintiff contends the failure to send his property home was the fault of defendant's agents.

#### CONCLUSIONS OF LAW

{¶ 5} Although it appears plaintiff's claim should be barred by the two year statute of limitations expressed in R.C. 2743.16(A), defendant did not offer such a defense and, consequently, any statute of limitations defense is waived.

{¶ 6} Plaintiff has no right to pursue a claim for property in which he cannot prove any rightful ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for the loss of contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1984), 84-09071.

{¶ 7} It has been previously held, an inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD.

{¶ 8} However, in the instant claim, defendant acted with court ordered authority to destroy the confiscated property. An inmate plaintiff is barred from recovering the value of confiscated property formally forfeited and, subsequently, destroyed pursuant to a properly obtained court order. *Dodds v. Department of Rehabilitation and Correction* (2000), 2000-03603-AD. Plaintiff's claim for the destroyed confiscated property is dismissed.

IN THE COURT OF CLAIMS OF OHIO

JIMMY SANDOVAL :  
Plaintiff :  
v. : CASE NO. 2004-05082-AD  
OHIO STATE PENITENTIARY : ENTRY OF ADMINISTRATIVE  
Defendant : 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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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9/13  
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