

(Defendants' Exhibit E.) Plaintiff's institution file was updated to show that he had an aggregate of 15 days of jail-time credit and that his revised release date was September 6, 2001.

{¶ 4} On January 4, 2000, the Eighth District Court of Appeals granted plaintiff's motion for an appeal bond and to suspend execution of his sentence pending the appeal of his conviction. On January 11, 2000, plaintiff was transported from PCI to the custody of the Cuyahoga County sheriff and subsequently released on an appeal bond. On January 9, 2001, the Court of Appeals issued an opinion and entry that affirmed plaintiff's conviction, terminated his bail, and remanded the case for execution of sentence.

{¶ 5} On January 25, 2001, plaintiff was returned to PCI to complete his sentence. DRC determined that plaintiff's release date was September 20, 2002, based upon 15 days of jail-time credit and the 111 days of prison time he had previously served. On March 29, 2002, a parole board conducted an assessment and determined that plaintiff would be subject to a three-year term of post-release control. The parole board also considered plaintiff for a transitional control program to monitor his adjustment to community supervision during the final 180 days of confinement. See R.C. 2967.26. The parole board approved plaintiff for transitional control release and, on April 11, 2002, plaintiff was released from prison and admitted to the Harbor Light halfway house in Cleveland, Ohio.

{¶ 6} Based upon the jail-time credit that was determined by the common pleas court, defendant calculated a new release date of September 12, 2002. Defendant also deducted ten days of "earned credit" from plaintiff's sentence for productive participation in educational or vocational programs. Including the earned credit, DRC recalculated the release date to be September 2, 2002; however, due to a miscommunication between DRC and APA, plaintiff was not released from transitional control until September 5, 2002.

{¶ 7} Plaintiff asserts that defendants are liable for false imprisonment because DRC improperly calculated his release date and APA held him in custody beyond that date. DRC maintains that it relied on the entries from common pleas court and that it properly calculated plaintiff's release date.

{¶ 8} Pursuant to R.C. 2743.02(A)(1), the state may be held liable for false imprisonment. *Bennett v. Ohio Dept. of Rehabilitation and Correction* (1991), 60 Ohio St.3d 107, paragraph two of the syllabus. False imprisonment occurs when a person confines another intentionally “*** without lawful privilege and against his consent within a limited area for any appreciable time, however short.” *Feliciano v. Kreiger* (1977), 50 Ohio St.2d 69, 71, quoting 1 Harper and James, *The Law of Torts*, 226, Section 3.7 (1956). 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 appear such judgment or order is void.” *Bennett*, supra, at 111, quoting *Diehl v. Friester* (1882), 37 Ohio St. 473, 475.

{¶ 9} Plaintiff first asserts that he was not credited with the total amount of jail time that he served. At trial, plaintiff identified numerous documents that include his correspondence with the Cuyahoga County Court of Common Pleas regarding jail-time credit. (Defendants’ Exhibit S.) Plaintiff testified that he filed several motions for additional jail-time credit while he was incarcerated. On November 10, 1999, plaintiff filed a motion seeking three additional days of credit for time that he spent in municipal jail. On November 19, 1999, the common pleas court issued a journal entry granting plaintiff’s motion. Handwritten notes on the copy of the journal entry that was admitted as evidence at trial show that DRC included the eight days of transport time previously calculated by DRC in reaching the total of 11 additional days of jail-time credit reflected in the entry. (Defendants’ Exhibit E.)

{¶ 10} On June 17, 2002, plaintiff filed another motion for additional jail-time credit. On June 28, 2002, the Cuyahoga County Court of Common Pleas issued an entry granting plaintiff “a total of 23 days credit for time spent in the county jail.” Although plaintiff testified that he filed another motion in September 2002 for an additional five days of jail-time credit, the common pleas court did not grant any additional time as a result of that motion. DRC calculated a new release date of September 12, 2002, based upon 23 days of jail-time credit and 111 days of previous prison time. After applying ten days of earned credit, DRC determined that plaintiff’s adjusted release date was September 2, 2002.

{¶ 11} R.C. 2967.191 requires DRC to “reduce the stated prison term of a prisoner *** by the total number of days that the prisoner was confined for any reason arising out of the offense for which the prisoner was convicted and sentenced, including confinement in lieu of bail while awaiting trial, confinement for examination to determine the prisoner’s competence to stand trial or sanity, and confinement while awaiting transportation to the place where the prisoner is to serve the prisoner’s prison term.” Furthermore, “[a]lthough the APA has a mandatory duty pursuant to R.C. 2967.191 to credit an inmate with jail time already served, it is the trial court that makes the factual determination as to the number of days of confinement that a defendant is entitled to have credited toward his sentence.” *State ex rel. Rankin v. Ohio Adult Parole Auth.* 98 Ohio St.3d 476, 2003-Ohio-2061, ¶7. Therefore, plaintiff was entitled to only the amount of jail-time credit that the trial court determined was appropriate by law. “The APA cannot ignore the trial court’s determination of jail-time credit and substitute its own judgment in complying with the mandate of R.C. 2967.191.” *Id.* at ¶8.

{¶ 12} Based upon the testimony and evidence, the court finds that plaintiff was entitled to a total of 23 days of jail-time credit pursuant to the June 28, 2002, order from the Cuyahoga County Court of Common Pleas. Although plaintiff asserts that those 23 days should be credited in addition to the jail time that he served after he was sentenced on September 14, 1999, the evidence does not support plaintiff’s assertion. The court’s September 14, 1999, sentencing entry credited plaintiff with four days of jail time served. The parties agree that plaintiff was in custody both for eight days between September 15 and 23, 1999, and when he was subsequently transported to LorCI. DRC updated plaintiff’s records to show that he had a total of 15 days of credit at the time of his release pending his appeal. The common pleas court’s November 19, 1999, entry credited plaintiff with an additional 11 days of jail time as a result of granting plaintiff’s motion for three days of municipal jail credit plus credit given for eight days of transport time. When plaintiff was returned to prison after his release on the appeal bond, he was credited with the previously calculated 15 days of jail-time credit.

{¶ 13} Mary Oakley, the north regional assistant chief of DRC's Bureau of Sentence Computation, testified that after an inmate has been returned to incarceration following release on an appeal bond, the trial court would typically include all previous jail-time credit in its order. According to Oakley, the common pleas court's entry dated June 28, 2002, that stated that plaintiff was entitled to "23 days credit for time spent in county jail prior to sentencing," referred to all jail-time credit that plaintiff had previously earned. Oakley testified that DRC's records office telephoned the sheriff's office to verify the number of days that plaintiff had been incarcerated. Using the calculations that were handwritten on the trial court's entry, Oakley concluded that plaintiff served 19 days of actual jail time. (Defendants' Exhibit P.) However, the handwritten dates listed on the entry did not include the three days of municipal jail time that plaintiff served from August 21-23, 1998, which was credited in the common pleas court's November 19, 1999, order. Oakley further testified that the APA had access to DRC's computer database that contained plaintiff's updated release date that included all jail-time credit, transport time, and earned credit.

{¶ 14} DRC's calculations on Defendants' Exhibit P also did not address the eight days of transport time that had been previously credited. DRC's records office is required to reduce an inmate's sentence by the number of days specified in the sentencing court's entry, plus the number of days the offender was confined between the date of the entry and the date he was committed to the institution. Ohio Adm.Code 5120-2-04(D). Defendants acknowledged in their pleadings, and Oakley confirmed in her testimony, that plaintiff was confined between September 15-23, 1999. Defendants also acknowledge that plaintiff was in transit to LorCI during that period and that he had received eight days of credit pursuant to the common pleas court's entry. However, the release date that DRC calculated after receiving the June 28, 2002, court entry did not include the eight days of transport credit.

{¶ 15} For the reasons stated above, the court finds that the common pleas court credited plaintiff with eight days of transport time in its November 19, 1999, entry and that DRC failed to include that credit when it calculated plaintiff's September 2, 2002, release date. Although the court's June 28, 2002, entry stated the total number of days of jail time that plaintiff had served, this

court finds that it did not address the previously credited transport time and that DRC should have included eight days of transport time in its release date calculations.

{¶ 16} Furthermore, although plaintiff's calculated release date was September 2, 2002, he was not released from transitional control until September 5, 2002, a difference of three days. Therefore, including the eight days of transport time, the court finds that plaintiff was held for a total of 11 days beyond his lawful term.

{¶ 17} Plaintiff also asserts that he was not given the proper amount of earned credit; however, such credit is not accumulated until it is approved by the program staff. At the time of his release on transitional control, plaintiff had accumulated ten days of earned credit that was deducted from his stated prison term pursuant to R.C. 2967.193 and Ohio Adm.Code 5120-2-06. Pursuant to R.C. 2967.193, an inmate confined in a state correctional institution may earn one day of credit as a deduction from his stated prison term for each full month during which he productively participates in an approved program, such as an education, vocation or work program. A deduction for earned credit is applied to an inmate's record after the program staff has determined that the inmate has met all the requirements and the deputy warden or his designee has reported the inmate's name to the records office supervisor. Ohio Adm.Code 5120-2-06(O). The records office supervisor then applies the credit earned for that month to the inmate's release date. *Id.*

{¶ 18} Although plaintiff argues that he was entitled to 12 days of earned credit rather than ten, he did not present any evidence or testimony to show that had been approved for more than ten days. Oakley testified that plaintiff's inmate records show a total of ten days of earned credit and that those ten days had been credited in calculating his final release date. The court finds that plaintiff has failed to prove that defendants miscalculated his earned credit.

{¶ 19} Plaintiff next claims that DRC wrongfully deducted reimbursement fees from the paychecks he received from his employer while he was on transitional control. However, R.C. 2967.26(E) and Ohio Adm.Code 5120-12-05(A) authorize the APA to require an inmate who is transferred to transitional control to pay a fee for reasonable expenses incurred in supervising or confining him. Furthermore, Ohio Adm.Code 5120-12-05(B) requires inmates in the transitional

control program who work at paid employment to deposit their total earnings, less authorized payroll deductions, into an account maintained by the licensed facility and supervised by DRC. A portion of the inmate's weekly gross income, up to 25 percent, must be transferred to the transitional control fund to pay costs related to the program. Ohio Adm.Code 5120-12-05(C).

{¶ 20} At trial, plaintiff did not present any evidence to support his claim that DRC wrongfully deducted reimbursement fees. Even if the court were to consider the earnings statements attached to plaintiff's complaint, those statements show that less than 25 percent was deducted from his wages. The court finds that plaintiff has failed to prove that any funds were improperly withheld.

{¶ 21} Regarding plaintiff's damages, although he does not qualify for statutory damages under R.C. 2743.48 because he was not a wrongfully imprisoned individual within the meaning of the statute, this court has used the statute as a guideline for determining damages for false imprisonment. See *Corder v. Ohio Dept. of Rehab. & Corr.* (Sept. 30, 1996), Franklin App. No. 96API03-341. "Since plaintiff is not a wrongfully imprisoned individual, but is, instead, an individual who was incarcerated *** longer than he should have been, plaintiff is entitled to compensation, but not the full compensation under R.C. 2743.48." *Rainey v. Lorain Correctional Facility* (July 2, 1996), Court of Claims No. 93-14538, aff'd on appeal, (1997), 121 Ohio App.3d 428, 433.

{¶ 22} The court finds that a reduction of the amount of compensation by 50 percent is appropriate, since plaintiff is not a wrongfully imprisoned individual under R.C. 2743.48. Thus, the court finds that plaintiff is entitled to \$1,214.52 as compensation for the 11 days he was falsely imprisoned. See *Rainey*, supra.

{¶ 23} Plaintiff also seeks damages for lost wages. Plaintiff must prove by a preponderance of the evidence that he sustained lost wages, or other income as a result of his 11 days of false imprisonment. Plaintiff testified that he was not allowed to work during the last three days of transitional control; that he had obtained employment making \$6.50 per hour; and that he would have worked 25 hours during that period of time. Based upon plaintiff's testimony, the court finds

that plaintiff has proven by a preponderance of the evidence that he is entitled to \$162.50 for lost wages, which represents 25 hours of lost wages at \$6.50 per hour.

{¶ 24} Accordingly, it is recommended that judgment be rendered in favor of plaintiff in the total amount of \$1,402.92, which includes the \$25 filing fee paid by plaintiff.

A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).

ANDERSON M. RENICK
Magistrate

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