

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. According to plaintiff's complaint, he was released by defendant on February 24, 2003. Plaintiff alleges that he was held by defendant beyond his lawful term of incarceration. More specifically, plaintiff contends that the transcript of proceedings held before the sentencing court clearly establishes that plaintiff should have been placed on probation, but that the order of the trial court incorrectly states that plaintiff was to be sentenced to a term of incarceration.

{¶5} In support of the motion for summary judgment, defendant has submitted the affidavit of Mary Oakley, an employee of defendant's Bureau of Sentence Computation. Oakley's affidavit provides, in relevant part:

{¶6} "***

{¶7} "3. I have reviewed the sentence computation of Todd Pilz and have personal knowledge of the facts and circumstances surrounding the computation.

{¶8} "4. On July 25, 1996, Cuyahoga County Common Pleas Court found Todd Pilz guilty of Aggravated Robbery in violation of R.C. 2911.01(A-2), a felony of the first degree. Mr. Pilz was sentenced to 10-25 years in the Lorain Correctional Institution. This sentence was suspended and Mr. Pilz was placed on probation for 5 years as set forth in Exhibit A. Exhibit A is true and accurate copy of the certified sentencing entry.

{¶9} "5. On February 6, 1997, Medina County Common Pleas [sic] Court found Todd Pilz guilty of Robbery in violation of R.C. 2911.01, a felony of the second degree. Mr. Pilz was sentenced to a definite term of three years as set forth in Exhibit B. Exhibit B is a true and accurate copy of the certified sentencing entry.

{¶10} "6. On June 18, 1997, Todd Pilz was found to be a probation violator in Cuyahoga County Common Pleas Court. The Court ordered that Mr. Pilz original sentence be imposed as set forth in Exhibit C. Exhibit C is a true and accurate copy of the certified sentencing entry."

{¶11} Plaintiff does not challenge the facts set forth in Oakley's affidavit. Rather, plaintiff argues that the sentencing entry sent to defendant in 1997 was not correct.

{¶12} Indeed, there is no dispute that on October 27, 1999, plaintiff filed a motion with the sentencing court requesting the court to issue a corrected sentencing entry; that plaintiff obtained a writ of mandamus from the Cuyahoga County Court of Appeals on January 9, 2003, ordering the sentencing court to rule upon plaintiff's October 27, 1999, motion; that the sentencing court subsequently GRANTED plaintiff's motion in January 2003; and that two separate entries ordering plaintiff's release were journalized by the sentencing court on February 21 and 26, 2003, respectively.

{¶13} The evidence in this case is undisputed. Consequently, defendant's motion for summary judgment will be resolved based on purely legal issues.

{¶14} "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, 109. 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.* at 111.

{¶15} Based upon the undisputed evidence, the court finds that defendant, without delay, released plaintiff once it gained knowledge that the privilege under which plaintiff had been confined had expired. Under the rule of law set forth by the Ohio Supreme Court in *Bennett*, *supra*, defendant cannot be held liable to plaintiff for false imprisonment if plaintiff were confined in accordance with the judgment of the sentencing court.

{¶16} Upon review of the original sentencing order, the court does not perceive any error which would draw into question the sentencing court's jurisdiction over plaintiff's criminal case. Under *Bennett*, *supra*, defendant does not have discretion to deviate from the sentencing court order unless the order is void. Although the sentencing court subsequently corrected its mistake by issuing a nunc pro tunc entry, such correction does not render the prior order void. Thus, even though plaintiff has proven that the sentencing court erred by issuing an incorrect sentencing order and by subsequently failing to timely rule upon his motion to correct the error, the law does not permit the court to impute these errors and impose liability upon defendant for false imprisonment.

{¶17} In short, the court finds that the only conclusion to be drawn from the undisputed evidence set forth above is that defendant was under a legal obligation to confine plaintiff until it received the corrected journal entry from the sentencing court. Consequently, as a matter of law defendant did not falsely imprison plaintiff.

{¶18} Defendant's motion for summary judgment shall be granted.

{¶19} 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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