

[Cite as *Floyd v. Ohio Adult Parole Auth.*, 2005-Ohio-5071.]

IN THE COURT OF CLAIMS OF OHIO
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A.I. FLOYD :
Plaintiff : CASE NO. 2004-09746
v. : Judge J. Craig Wright
OHIO ADULT PAROLE AUTHORITY, : DECISION
et al. :
Defendants :
: :

{¶ 1} On July 6, 2005, plaintiff filed a motion for summary judgment. On August 3, 2005, defendants, Ohio Department of Rehabilitation and Correction (DRC) and Ohio Adult Parole Authority (APA), filed a response and cross-motion for summary judgment. Plaintiff responded to defendants' motion on August 10, 2005. All motions are now before the court for a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶ 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} Plaintiff was previously an inmate in the custody and control of DRC pursuant to R.C. 5120.16 from August 1987 until he was released on parole on September 27, 2004. On August 5, 1987, plaintiff was convicted of burglary and sentenced to a term of five to fifteen years, to run concurrently with the sentence that he was already serving. Upon receipt of the sentencing entry, DRC notified the sentencing court that R.C. 2929.41 required the imposition of consecutive sentences. An amended entry was received by DRC on September 8, 1987, imposing a minimum of four years imprisonment for the burglary conviction, to run consecutively with the other sentence.

{¶ 5} To the extent that plaintiff alleges that APA should have released him prior to September 27, 2004, the court lacks subject matter jurisdiction of claims challenging APA's decision to deny parole. *Deavors v. Ohio Dept. of Rehab. & Corr.* (May 20, 1999), Franklin App. No. 98AP-1105; *Johnson v. Ohio Adult Parole Authority* (Feb. 1, 2000), Franklin App. No. 99AP-522. Accordingly, plaintiff's claim against APA must be denied.

{¶ 6} With respect to plaintiff's claim that his constitutional rights were violated, in *White v. Ohio Dept. of Rehab. and Corr.* (Dec. 22, 1992), Franklin App No. 92AP-1229, the Tenth District Court of Appeals stated:

{¶ 7} "To the extent plaintiff's allegations are meant to assert violations of his constitutional rights under the Ohio or United States Constitutions, the Court of Claims lacks jurisdiction. More

particularly, pursuant to R.C. 2743.02, the state has consented to be sued in the Court of Claims in accordance with the same rules applicable to private persons. Since a private party cannot be held liable for the constitutional claims plaintiff asserts, his complaint is not within the jurisdiction of the Court of Claims." Citing *Thompson v. Southern State Community College* (June 15, 1989), Franklin App. No. 89AP-114; cf. *NCAA v. Tarkanian* (1988), 488 U.S. 179.

{¶ 8} Based on the above, it is clear that defendants are entitled to judgment as a matter of law on the constitutional claims asserted by plaintiff.

{¶ 9} Turning to plaintiff's claim of false imprisonment, the elements of such a claim are: (1) expiration of the lawful term of confinement; (2) intentional confinement after the expiration; and (3) knowledge that the privilege initially justifying confinement no longer exists. *Corder v. Ohio Dept. of Rehab. & Corr.* (1994), 94 Ohio App.3d 315; *Bennet v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St.3d 107. "[A]n 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 that such judgment or order is void." *Bennet*, supra, at 111, quoting *Diehl v. Friester* (1882), 37 Ohio St. 473, 475.

{¶ 10} Although plaintiff claims that the original sentencing order was void because it incorrectly imposed a concurrent sentence, it is clear that the sentencing court retained jurisdiction of the matter. See *Brinkman v. Drolesbaugh* (1918), 97 Ohio St. 171; *Tymicio v. State of Ohio* (1977), 52 Ohio App.2d 298. Thus, DRC cannot be held liable to plaintiff. *Bennet*, supra.

{¶ 11} In short, upon review of the motions for summary judgment, the memoranda filed by the parties, and the supporting and opposing affidavits, the court finds that no genuine issues of

material fact exist and that defendants are entitled to judgment as a matter of law.

{¶ 12} For the foregoing reasons, defendants' motion for summary judgment shall be granted and plaintiff's motion for summary judgment shall be denied.

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Plaintiff	:	CASE NO. 2004-09746
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v.	:	
	:	<u>JUDGMENT ENTRY</u>
OHIO ADULT PAROLE AUTHORITY,	:	
et al.	:	
Defendants	:	
: : : : : : : : : : : : : : : :		

A non-oral hearing was conducted in this case upon the parties' motions for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendants' motion for summary judgment is GRANTED and judgment is rendered in favor of defendants. Plaintiff's motion for summary judgment is DENIED and all other pending motions are DENIED as moot. 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. CRAIG WRIGHT
Judge

Entry cc:

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