

[Cite as *Thompson v. Ohio Dept. of Rehab. & Corr.*, 2005-Ohio-6113.]
IN THE COURT OF CLAIMS OF OHIO

LARRY THOMPSON :
Plaintiff :
v. : CASE NO. 2005-03172-AD
REHABILITATION AND CORRECTION : MEMORANDUM DECISION
Defendant :

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{¶ 1} Plaintiff, Larry Thompson, a former inmate under the custody of defendant, Department of Rehabilitation and Correction ("DRC"), filed this claim asserting he was falsely imprisoned for a period of twenty-two days. Plaintiff contended that due to this alleged false imprisonment he suffered damages in the amount of \$2,500.00, the statutory maximum recoverable under R.C. 2743.10. Plaintiff's described damages included, "loss of car, family time and job opportunities." The filing fee was paid. Plaintiff alleged he was knowingly held by defendant for an extended period beyond the expiration date of his criminal sentence. Plaintiff maintained he was incarcerated despite the fact defendant knew it did not have a right to continue to hold him in custody.

{¶ 2} Plaintiff was originally received at a DRC institution on March 19, 2003, upon being sentenced to a prison term pursuant to the proceedings in the Adams County Common Pleas Court following a December, 2002 arrest by the Adams County Sheriff. On October 21, 2004, plaintiff again appeared before the Adams County Common Pleas Court for re-sentencing. Judge David G. Sunderland of the Adams County Common Pleas Court, by entry (filed October 27, 2004), sentenced plaintiff to a prison term of two years and granted plaintiff jail time credit of 569 days for time served on his

sentence. Plaintiff was also ordered conveyed to the custody of defendant and was transported to defendant's Chillicothe Correctional Institution ("CCI"). Using the October 21, 2004, date of the re-sentencing proceeding and applying the 569 days of jail time credit against the two year sentence term, the trier of fact finds plaintiff's release date from custody was set for March 30 or March 31, 2005.

{¶ 3} By an entry filed on January 6, 2005, signed by Judge Sunderland, plaintiff was granted 660 days of jail time credit for the time previously served. This entry set plaintiff's release date from DRC custody at December 28, 2004.¹ The entry was received by defendant on January 6, 2005. Since plaintiff's release date had already elapsed when the entry was received, Judge Sunderland ordered plaintiff's immediate release from incarceration. Defendant promptly complied with this order and released plaintiff from CCI on the same day the entry was received (January 6, 2005).

{¶ 4} Plaintiff insisted his scheduled release date from incarceration was set at December 16, 2004, and DRC personnel were aware of this scheduled release date. Plaintiff argued defendant deliberately refused to release him from custody on December 16, 2004, despite knowledge that the December 16, 2004 date was the day his prison sentence expired. Plaintiff essentially asserted he was confined by defendant for a twenty-two day period of time during which DRC knew it had no right to continue this confinement.

{¶ 5} Plaintiff submitted a copy of a document titled Waiver of Extradition Parole/Post Release Control, which was apparently signed on November 5, 2004, by plaintiff and Marta Hutchens,

¹ Defendant's own calculations estimated a December 30, 2004, release date for plaintiff when applying the 660 days of jail time credit to his set prison sentence.

identified by plaintiff as a "case manager." This document designates December 16, 2004, as the effective date of plaintiff's entrance into Post Release Control. Plaintiff proposed the document represents clear evidence he was to be released from DRC custody on December 16, 2004, and defendant's personnel had specific knowledge he was set to be released from incarceration on December 16, 2004. Plaintiff also submitted a document dated January 6, 2005, titled Post Release Control Reporting Order. This document signed by plaintiff and CCI's Record Officer, Kathryn Lovely, lists plaintiff's Post Release Control Date as January 6, 2005. Plaintiff did not submit any documentary evidence from the Adams County Common Pleas Court indicating notice of a grant of additional jail time credit in his favor was received by defendant between October 27, 2004, and January 6, 2005.

{¶ 6} Defendant contended plaintiff failed to produce sufficient evidence to prove his incarceration was continued when DRC knew or should have known his prison term had expired. Defendant insisted plaintiff was held in accordance with a lawful court order until sentence correcting information was received. Defendant explained plaintiff was immediately released from confinement upon receipt of a sentence amending document from the Adams County Common Pleas Court. Plaintiff has not provided any evidence proving defendant received notice his sentence has expired before January 6, 2005.

{¶ 7} To the extent that plaintiff alleges a claim for false imprisonment under the common law, the tort of false imprisonment is defined as an intentional confinement of an individual in the absence of an intervening justification, despite knowledge that the privilege initially justifying that confinement no longer exists. *Bennett v. Ohio Dept. of Rehab. and Corr.* (1991), 60 Ohio St. 3d 107. 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[s] that such judgment or order of the court, is void." *Bennet*, id, at 111; *Tymcio v. State* (1977), 52 Ohio App. 2d 298, 303.

{¶ 8} Although defendant is required to credit an inmate with jail time served in calculating a term of actual confinement, "it is the trial court that makes the factual determination as to the number of days of confinement that {an inmate} 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. Therefore, plaintiff was entitled to only the amount of jail time credit that the trial court determined was appropriate. On October 21, 2004, the trial court determined plaintiff was entitled to 569 days of jail time credit. In a reevaluation, the trial court determined on January 6, 2005, that plaintiff was entitled to 660 days of jail-time credit, a determination which necessitated plaintiff's immediate release from confinement. Until defendant received this amended calculation of jail-time credit from the trial court, plaintiff's continued incarceration was justified.

{¶ 9} Plaintiff has failed to prove that DRC continued to confine him after receiving notice of jail-time credit from the trial court on January 6, 2005. Based upon the facts set forth, it is clear defendant incarcerated plaintiff pursuant to a lawful sentencing order and then released plaintiff after receiving notice that sentence expired. Liability for false imprisonment does not attach under these circumstances. Defendant did not knowingly or intentionally confine plaintiff beyond the expiration of his sentence. See *Mickey v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 02AP-539, 2003-Ohio-90.

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 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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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