

[Cite as *Harris v. Ohio Adult Parole Auth.*, 2005-Ohio-7115.]

IN THE COURT OF CLAIMS OF OHIO

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DWAYNE HARRIS :
Plaintiff : CASE NO. 2003-07146
v. : Judge J. Craig Wright
OHIO ADULT PAROLE AUTHORITY : Magistrate Steven A. Larson
Defendant : ENTRY GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

{¶ 1} On September 19, 2003, defendant filed a motion for summary judgment pursuant to Civ.R. 56. Plaintiff was granted leave to file a response on or before November 17, 2005. On November 10, 2005, plaintiff filed a cross-motion for summary judgment which the court construes as a response to defendant's motion for summary judgment. The case is now before the court on a non-oral hearing.

{¶ 2} Civ.R. 56 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, *Gilbert v. Summit County*, 104 Ohio St.3d 660, 661, 2004-Ohio-7108; citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} Plaintiff is currently incarcerated in the Mansfield Correctional Institution as a result of his conviction for crimes that he had committed in 1989. He was sentenced to 13 to 25 years, to be served consecutively to three years for a gun specification, and concurrently with a 1½ year sentence for an assault that occurred while he was awaiting trial. Such crimes were committed while plaintiff was on parole from a sentence that he was serving for a 1982 conviction. As a result, plaintiff is required to serve a sentence of 7 to 25 years, consecutively to the sentence imposed for the 1989 crimes. His sentence is not scheduled to end until June 11, 2035.

{¶ 5} In order to prevail on a claim for false imprisonment, plaintiff must prove that he was imprisoned beyond the expiration of his sentence. *Bennett v. Ohio Department of Rehabilitation and Correction, et al.* (1991), 60 Ohio St.3d 107. Because plaintiff's sentence is not scheduled to expire until June 11, 2035, plaintiff's claim for false imprisonment fails as a matter of law.

{¶ 6} Additionally, to the extent that plaintiff has alleged a claim for relief premised upon defendant's failure to provide him with a parole hearing, plaintiff was, in fact, provided with such a hearing on April 22, 2003, pursuant to the decision in *Layne v. Ohio Adult Parole Authority*, 97 Ohio St.3d 456, 2002-Ohio-6719. Plaintiff's next parole hearing date was moved up to June 2009 from December 2010.

{¶ 7} Plaintiff's claims that his constitutional rights have been violated by defendant are not within the jurisdiction of this

court because the state is not a "person" within the meaning of Section 1983, Title 42, U.S.Code. *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App.3d 170. Additionally, this court "lacks jurisdiction and will not act as an appellate court for decisions of the Parole Board, *** the court will not interfere with the classification and placement of prisoners." (Citations omitted.) *Steward v. Department of Rehabilitation and Correction* (1998), 94 Ohio Misc.2d 75, 76.

{¶ 8} Upon review of defendant's motion for summary judgment, the memoranda filed by the parties, the evidentiary materials submitted thereto, and construing the evidence most strongly in plaintiff's favor, no genuine issues of material fact exist and defendant is entitled to judgment as a matter of law. Accordingly, 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. CRAIG WRIGHT
Judge

Entry cc:

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ENTRY

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