

[Cite as *Taruh v. Ohio State Penitentiary*, 2006-Ohio-7195.]

IN THE COURT OF CLAIMS OF OHIO

ABDUL ALIM TARUH (BYRD) :
Plaintiff :
v. : CASE NO. 2005-11752-AD
OHIO STATE PENITENTIARY : MEMORANDUM DECISION
Defendant :

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FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Abdul A. Taruh, an inmate incarcerated at defendant, Ohio State Penitentiary ("OSP"), stated his books, magazines, envelopes, and other property items were confiscated by OSP personnel on or about January 7, 2004, and subsequently destroyed.

{¶ 2} 2) Plaintiff pointed out at the time his property was confiscated, he was given an opportunity to authorize the mailing of the confiscated property from OSP to a designated address. Plaintiff noted he refused to authorize the mailing of the confiscated property and refused to authorize the destruction of the property. Despite this refusal, the confiscated property was destroyed. Plaintiff maintained the books, magazines, envelopes, and additional items were thrown into the trash by OSP personnel.

{¶ 3} 3) Plaintiff filed this complaint seeking to recover \$975.55, the estimated replacement value of his discarded books, magazines, and envelopes. Plaintiff asserted defendant had no authority to dispose of the confiscated items, and subsequently,

should bear liability for the value of the property.

{¶ 4} 4) Defendant submitted a document, Inmate Contraband Slip, dated January 7, 2004, which records "113 Books," "33 Envelopes," and "59 pictures" were confiscated from plaintiff. Plaintiff refused to authorize the destruction of the declared contraband items and also refused to authorize the mailing of the confiscated items. Defendant contended plaintiff failed to produce sufficient evidence to establish he was the rightful owner of the destroyed property.

CONCLUSIONS OF LAW

{¶ 5} 1) Plaintiff has no right to pursue a claim for destroyed property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1988), 87-02540-AD; *Radford v. Department of Rehabilitation and Correction* (1985), 84-09071. Plaintiff failed to prove he rightfully owned the destroyed items.

{¶ 6} 2) By refusing to authorize the mailing of the books, magazines, and envelopes, plaintiff in effect abandoned the withheld printed material and voluntarily relinquished any rights of ownership. *Hutton v. Mansfield Correctional Inst.* (2001), 2001-04727-AD, affirmed jud; *Dyson v. Lebanon Correctional Inst.*, 2004-03381-AD, 2004-Ohio-5039.

{¶ 7} 3) An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the

property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD. Plaintiff has failed to show defendant did not have the authority or right to destroy the property claimed.

IN THE COURT OF CLAIMS OF OHIO

ABDUL ALIM TARUH (BYRD) :

Plaintiff :

v. :

CASE NO. 2005-11752-AD

OHIO STATE PENITENTIARY :

ENTRY OF ADMINISTRATIVE
DETERMINATION

Defendant :

: : : : : : : : : : : : : : :

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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RDK/laa

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