

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

RUSSELL F. FENNELL

Case No. 2007-01312-AD

Plaintiff

Clerk Miles C. Durfey

v.

MEMORANDUM DECISION

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

{¶1} On August 21, 2006, plaintiff, Russell F. Fennell, was sentenced in the Summit County Court of Common Pleas to a six month prison term to be served at a correctional institution under the control of defendant, Department of Rehabilitation and Correction. The matter of plaintiff receiving jail-time credit for time served was addressed in the (August 22, 2006 approved) sentencing entry. Specifically, the sentencing court stated that: "It Is Further Ordered that credit for time served in the Summit County Jail and the Community Based Correctional Facility is to be calculated by the Summit County Adult Probation Department and will be forthcoming in a subsequent journal entry." On August 28, 2006, plaintiff was conveyed to defendant's Lorain Correctional Institution (LorCI) by the Summit County Sheriff's Office. When plaintiff was transferred to defendant's institution no document establishing his jail-time credit was served on LorCI personnel.

{¶2} Plaintiff related that while he served time at LorCI he continued to inquire about receiving a document establishing his jail-time credit for days served at the Summit County Jail and the Community Based Correctional Facility. In response to plaintiff's September 15, 2006 pro se Motion for Jail Time Credit, the Summit County Court of Common Pleas issued an entry dated October 3, 2006, granting plaintiff 224 days of jail-time credit. This entry was received by LorCI personnel on October 3, 2006,

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and plaintiff was promptly released from incarceration that same day. Plaintiff stated that he subsequently discovered that he should have been incarcerated for only one day at LorCI, but served a total of 43 days pending the transmission of the jail-time credit entry from the Summit County Court of Common Pleas. Plaintiff observed that he was incarcerated by defendant for multiple weeks beyond the expiration of his sentence implying he was falsely imprisoned. Plaintiff filed this action asserting a claim against defendant for false imprisonment and requesting \$2,500.00 in damages for being held for weeks beyond the date his sentence should have expired when applying his jail-time credit to time served. Plaintiff was not required to pay a filing fee to pursue his claim.

{¶3} Defendant denied any liability in this matter. Defendant acknowledged plaintiff's action essential constitutes a false imprisonment claim. However, defendant denied being the responsible party for improperly holding plaintiff beyond the expiration of his sentence. Defendant stated, "It is the duty of the trial court to properly calculate the days of jail time credit and to communicate that number to the correctional institution so it can be credited properly." Additionally, defendant stated, "Pursuant to R.C. 2949.12, the court entry sentencing the offender to prison that is delivered to the prison with the inmate, shall include the number of jail time credit days to which the inmate is

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entitled.”¹ Since no order from the sentencing court establishing jail-time credit was received when plaintiff was conveyed to LorCI, plaintiff was incarcerated pursuant to a lawful sentencing entry and not as plaintiff contended, wrongfully imprisoned by defendant. Defendant asserted that no wrongful imprisonment occurred due to the fact that the privilege justifying plaintiff’s continued confinement existed until documentation of jail-time credit from the sentence court was received.

{¶4} Plaintiff asserts a claim for false imprisonment. “False imprisonment occurs when a person confines another intentionally ‘without lawful privilege and against his consent within a limited area for any appreciable time, however short.’ *Feliciano v. Kreiger* (1977), 50 Ohio St. 2d 69, 71, .*** quoting 1 Harper & James, *The Law of Torts* (1956), 226, Section 3.7” *Bennett v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St. 3d 107, 109.

{¶5} In order to prevail on his claim of false imprisonment plaintiff must show that: 1) his lawful term of confinement expired; 2) defendant intentionally confined him after the expiration, and 3) defendant had knowledge that the privilege initially justifying the confinement no longer existed. *Corder v. Ohio Dept. of Rehab. & Corr.* (1994), 94 Ohio App. 3d 315, 318. However, “an action for false imprisonment cannot be maintained where the wrong complained of is imprisonment in accordance with the judgement or order of a court, unless it appear that such judgment or order is void.” *Bennett*, at 111, quoting *Diehl v. Friester* (1992), 37 Ohio St. 473, 475.

{¶6} The instant claim is centered on the untimely calculation and untimely

¹ R.C. 2949.12 (Reception facilities for convicted felons) provides in pertinent part:

“The sheriff shall deliver the convicted felon into the custody of the managing officer of the reception facility and, at that time, shall present the managing officer with a copy of the convicted felon’s sentence that clearly describes each offense for which the felon was sentenced to a correctional institution, designates each section of the Revised Code that the felon violated and that resulted in the felon’s conviction and sentence to a correctional institution, designates the sentence imposed for each offense for which the felon was sentenced to a correctional institution, and, pursuant to section 2967.191 of the Revised Code, specifies the total number of days, if any, that the felon was confined for any reason prior to conviction and sentence.”

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receipt of notification of jail-time credit. The Tenth District Court of Appeals has outlined the duty of a particular trial court to calculate jail time credit. “A defendant is entitled by law to have credited to the sentence of incarceration the number of days that he or she was confined prior to conviction and sentence. R.C. 2949.08 ,² 2949.12. On July 1, 1998, Crim.R. 32.2 was amended, and the subdivision requiring the court to forward a statement of the number of days of confinement to which a defendant is entitled by law to have credited to his or her minimum and maximum sentence was deleted. Thus, currently, the only requirement that trial courts follow to calculate the number of days for jail-time credit is set forth in Ohio Adm. Code 5120-2-04(B).³ “* * * Although no statute or criminal rule requires trial courts to calculate the number of days of jail time credit, R.C. 2967.191⁴, 2949.08(C), and 2949.12 provide for the mandatory crediting of such time.” *State v. Thorpe* (June 30, 2000), Franklin App. Nos. 99AP-1180.

{¶7} Under *Bennett*, 60 Ohio St. 3d 107, defendant does not have the authority

² R.C. 2949.08 states, in pertinent part:

“When a person who is convicted of or pleads guilty to a felony or a misdemeanor is sentenced to a term of imprisonment in a jail, the judge or magistrate shall order the person into the custody of the sheriff or constable, and the sheriff or constable shall deliver the person with the record of the person’s conviction to the jailer, administrator, or keeper, in whose custody the person shall remain until the term of imprisonment expires or the person is otherwise legally discharged.

“(B) The record of the person’s conviction shall specify the total number of days, *if any*, that the person was confined for any reason arising out of the offense for which the person was convicted and sentenced prior to delivery to the jailer, administrator, or keeper under this section.” (Emphasis added.)

³ Ohio Administrative Code Section 5120.2-04 states, in part:

“(B) The sentencing court determines the amount of time the offender served before being sentenced. The court must make a factual determination of the number of days credit to which the offender is entitled by law and, if the offender is committed to a state correctional institution, forward a statement of the number of days of confinement which he is entitled by law to have credited. This information is required to be included within the journal entry imposing the sentence or stated prison term.”

⁴ R.C. 2967.191 states, in relevant part:

“ The department of rehabilitation and correction shall reduce the stated prison term of a prisoner *** by the total number of days that the prisoner was confined for any reason arising out of the offense for which the prisoner was convicted and sentenced, including confinement in lieu of bail while awaiting trial, confinement for examination to determine the prisoner’s competence to stand trial or sanity, and confinement while awaiting transportation to the place where the prisoner is to serve the prisoner’s prison

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to deviate from the sentencing order unless that order appears void on its face. Furthermore, pursuant to Ohio Adm. Code 5120-2-04(E), “[i]f the court’s journal entry of sentence or stated prison term fails to specify that the offender is entitled to any credit up to the date of sentencing, the record office shall reduce the sentence or stated prison term only by the number of days the sheriff reports the offender was confined between the date of the sentencing entry and the date the offender was committed to the department.” Moreover, pursuant to Ohio Adm. Code 5120-2-04(H), “[a] party questioning either the number of days contained in the journal entry or the record of the sheriff shall be instructed to address his concerns to the court or sheriff. Unless the court issued an entry modifying the amount of jail-time credit or the sheriff sends the institution corrected information about time confined awaiting transport, no change will be made.” Upon review of the above-mentioned code sections, the court finds that the omission of a finding of jail-time credit does not render plaintiff’s sentencing entry void, nor is it inconsistent with statutory requirements. The court further finds that it was reasonable for defendant to infer that the trial court granted no jail-time credit to plaintiff, despite the language in the sentencing order.

{¶8} Although plaintiff’s sentence had expired before the date of his release, defendant did not continue to confine plaintiff after it had knowledge that the privilege initially justifying his confinement no longer existed. Defendant was required to credit plaintiff with all the jail-time that he was due, but no statute imposes a duty upon defendant to investigate the matter with the sentencing court. Indeed, the Tenth District Court of Appeals has stated that, “[t]he law has been and is still clear that, although the Adult Parole Authority is the body who credits the time served, it is the sentencing court who makes the determination as to the amount of time served by the prisoner before being sentenced to imprisonment in a facility under the supervision of the Adult Parole Authority.” *State ex rel. Corder v. Wilson* (1991), 68 Ohio App. 3d 567, 572. Plaintiff has failed to produce evidence to establish any claim based on false imprisonment

term.”

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ENTRY OF ADMINISTRATIVE DETERMINATION

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.

MILES C. DURFEY
Clerk

Entry cc:

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RDK/laa

9/19

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