

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

TERRANCE APPLING, SR.

Case No. 2007-04842-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

MEMORANDUM DECISION

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

FINDINGS OF FACT

{¶1} 1) On August 31, 2006, employees at defendant's Pickaway Correctional Institution ("PCI"), conducted a shakedown search of the cell of plaintiff, Terrance Appling, Sr., an inmate. Incident to the shakedown search, PCI staff member, Sgt. Geiger, confiscated several items of personal property from plaintiff's cell.

{¶2} 2) Plaintiff recalled a JWIN CD player, a set of Koss headphones, fourteen compact discs, a fan, and two remote controls were confiscated. Plaintiff explained the JWIN CD player and Koss headphones had been stolen about a month before the shakedown search, but the items were subsequently recovered and returned to his possession by a fellow inmate. Plaintiff related that due to the fact the CD player and headphones were stolen, the original serial numbers had been removed. According to plaintiff, the numbers identifying the items as his property had been removed. Plaintiff observed the CD player had a new serial number stamped on it and the headphones displayed no number at all. Plaintiff maintained Sgt. Geiger knew he owned the JWIN CD player and Koss headphones. However, Geiger confiscated the property items despite the fact plaintiff held titles for the CD player and headphones.

{¶3} 3) Plaintiff filed this complaint seeking to recover \$221.95, the total estimated replacement cost of the confiscate CD player, compact discs, headphones,

Case No. 2007-04842-AD	- 2 -	MEMORANDUM DECISION
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fan, and remote controls. Plaintiff submitted a receipt showing he paid \$63.97 for a JWIN CD player on June 28, 2005. Plaintiff also submitted copies of two titles indicating he owned a JWIN CD player and a set of Koss headphones. The titles were issued at PCI on August 24, 2005. The filing fee was paid.

{¶4} 4) Defendant acknowledged property was confiscated from plaintiff's possession and declared contraband. Plaintiff was charged with a disciplinary infraction for contraband possession and was subsequently found guilty of that infraction. Defendant related the headphones were confiscated from plaintiff because the item "had an identifying number not assigned to plaintiff." Defendant further related the CD player was confiscated due to the fact the item "did not have an identifying number." Furthermore, defendant explained the fan, compact discs, and remotes were confiscated when plaintiff could not furnish proof of ownership. Defendant noted all confiscated items were destroyed in accordance with institutional rules. Defendant stated "plaintiff was found guilty of violating rule 50 of the departmental rules of conduct," a rule that prohibits possession of another inmate's property. Defendant denied any liability in this matter based on the destruction of the confiscated property. Defendant asserted the confiscated items were destroyed due to the altered state of certain articles. Additionally, other items were destroyed because plaintiff could not produce sufficient proof of ownership.

{¶5} 5) Plaintiff filed a response insisting he was the rightful owner of all property items confiscated by defendant. Plaintiff contended defendant failed to prove the confiscated property belonged to another inmate. Plaintiff argued the confiscated property items were not destroyed in accordance with any administrative rule.

CONCLUSIONS OF LAW

{¶6} 1) Although not strictly responsible for a prisoner's property, defendant had at least the duty of using the same degree of care as it would use with its own property. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD.

{¶7} 2) Plaintiff has the burden of proving, by a preponderance of the

Case No. 2007-04842-AD	- 3 -	MEMORANDUM DECISION
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evidence, that he suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD.

{¶8} 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.

{¶9} 4) Plaintiff has no right to pursue a claim for confiscated, stolen, or lost property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. The issue of ownership of property is determined by the trier of fact based on evidence presented. *Petition for Forfeiture of 1978 Kenworth Tractor v. Mayle* (Sept. 24, 1993), Carroll App. No. 605. The trier of fact, in the instant action, finds the confiscated property items were not owned by plaintiff. Therefore, plaintiff may not recover damages associated with the loss of property he did not own. See *Mumm v. Ohio Dept. of Rehab. and Corr., et al.*, Ct. of Cl. No. 2004-04574-AD, 2004-Oho-5134.

{¶10} 5) It was held that property in an inmate's possession which cannot be validated by proper indicia of ownership is contraband and consequently, no recovery is permitted when such property is confiscated. *Wheaton v. Department of Rehabilitation and Correction* (1988), 88-04899-AD. An inmate plaintiff is barred from pursuing a claim for the loss of use of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. and Corr.* (2001), 2000-09849-AD.

{¶11} 6) Plaintiff in the instant claim failed to provide sufficient proof to establish he owned the destroyed compact discs, and remotes. See *Canitia v. Trumbull Correctional Inst.*, Ct. of Cl. No. 2003-05739-AD, 2003-Ohio-5551; *Cisternino v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2004-04388-AD, 2004-Ohio-5413; *Noble v. Dept. of Correction and Rehabilitations*, Ct. of Cl. No. 2006-02838-AD, 2006-Ohio-7248.

{¶12} 7) Plaintiff is barred from any recovery in connection with the

Case No. 2007-04842-AD	- 4 -	MEMORANDUM DECISION
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destruction of the CD player and headphones. Evidence establishes both of these items were altered. The identification numbers on the items were either removed or replaced. An inmate maintains no right of ownership in property which is impermissibly altered and therefore, has no right to recovery when the altered property is destroyed. *Watley v. Ohio Department of Rehabilitation and Correction*, Ct. of Cl. No. 2005-05183-AD, jud, 2005-Ohio-4320; *Griffin v. Ohio Department of Corrections*, Ct. of Cl. No. 2005-08271-AD, 2006-Ohio-7150.

{¶13} 8) An inmate plaintiff is barred from pursuing a claim for the loss of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla; Waver v. Ohio Dept. of Corrections*, Ct. of Cl. No. 2006-02960-AD, 2006-Ohio-7250. Plaintiff's claim for the CD player and headphones is denied.

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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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
11/6
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