

# 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

GREGORY W. MCDONALD

Case No. 2007-05113-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

MEMORANDUM DECISION

OHIO STATE PAROLE BOARD

Defendant

{¶1} Plaintiff, Gregory W. McDonald, stated he had an arrest warrant issued for him on April 22, 2005, was arrested on the warrant, and then appeared in court for a probation violation hearing. Plaintiff maintained he was ordered to attend the Community Based Correctional Facility in Newark, Ohio, as a result of the court proceedings and duly reported to this facility on May 6, 2005. Subsequently, on July 6, 2005, plaintiff was arrested and held in the Licking County Jail from July 6, 2005 to July 8, 2005. Plaintiff asserted he was arrested and jailed on the April 22, 2005, arrest warrant that should have been recalled but was not recalled.

{¶2} Consequently, plaintiff filed this claim for false arrest contending defendant, Adult Parole Authority (“APA”), should bear liability for his claimed damages based on his July 6, 2005, arrest and subsequently three day incarceration. Plaintiff noted he suffered \$2,500.00 in damages for work loss, loss of freedom, and emotional trauma associated with his alleged false arrest and imprisonment. Plaintiff was not required to pay a filing fee to pursue this action.

{¶3} Defendant explained a warrant for plaintiff’s arrest was issued by the Richland County Court of Common Pleas on April 21, 2005, following a bond revocation for probation violations. Apparently, the April 21, 2005, arrest warrant was not served, however plaintiff did appear in the Richland County Court of Common Pleas on May 4, 2005, and was ordered to serve additional community control sanctions of residential

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placement at the Licking/Muskingum Community Corrections Center (“LMCCC”) in Newark. Although the court ordered plaintiff to serve community control sanctions at LMCCC during his appearance on May 4, 2005, the bench warrant for his arrest issued April 21, 2005, was not revoked, recalled, or served. Therefore, the arrest warrant remained active in the court information computer database. Defendant related that on or about July 8, 2005, while plaintiff was residing at LMCCC, he was arrested on the still active April 21, 2005, warrant and held in the Newark jail until July 11, 2005. Defendant further related plaintiff was released from jail due to the efforts of his parole officer who was successful in persuading the Richland County Court of Common Pleas to recall the April 21, 2005, arrest warrant.

{¶4} Defendant has urged plaintiff failed to offer sufficient proof to establish that APA was responsible for the false arrest claimed. Defendant noted that APA did not issue the bench warrant for plaintiff in April 2005, and that APA was not charged with the responsibility to withdraw the warrant after plaintiff appeared in court. Defendant contended the Richland County Court of Common Pleas, as the court issuing the warrant, maintained sole responsibility for revoking the warrant. Furthermore, defendant related that APA did not arrest plaintiff in July 2005, but did secure the plaintiff’s release and revocation of the arrest warrant. Defendant asserted plaintiff has failed to prove any set of facts to show that APA was liable for his arrest and incarceration incident to that arrest.

{¶5} Plaintiff filed a response insisting the APA should bear liability for his claimed false arrest and subsequent false imprisonment of three days. Plaintiff stated defendant’s employee, Probation Officer Russell Daubenspeck, “had the arrest warrant issued and failed to have the arrest warrant recalled.” Plaintiff contended Probation Officer Daubenspeck had a duty to recall the arrest warrant and breached this duty which resulted in plaintiff’s arrest and confinement. Essentially, plaintiff maintained, the APA by and through the inaction of its employee Daubenspeck in failing to recall the arrest warrant caused the damaged requested. Plaintiff pointed out APA employee

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Daubenspeck instructed the Richland County Clerk of Court to issue a bench warrant for plaintiff's arrest on April 20, 2005. Plaintiff submitted a copy of a document from the Richland County Court of Common Pleas captioned "Instructions to Clerk For Bench Warrant." The document was signed by Probation Officer Daubenspeck who made the request of the Clerk of Court to, "Please issue a bench warrant for the above named defendant (plaintiff, Gregory McDonald); due to the allegation he had his bond revoked per probation officer." According to plaintiff, the arrest warrant issued through the Richland County Clerk of Court's Office without a judge's signature was solely by the authorization of Probation Officer Daubenspeck.

{¶6} Plaintiff's action against defendant essentially lies in false arrest precipitated by the alleged negligent acts of the APA in failing to timely request the Richland County Court of Common Pleas recall the April 21, 2005 arrest warrant. Defendant denied liability in this matter based on the fact the APA did not arrest plaintiff in July 2005 and the contention the APA did not owe a duty to plaintiff to recall the April 21, 2005, arrest warrant. Defendant maintained it was the responsibility of the Richland County Court of Common Pleas to recall the bench warrant when plaintiff made his court appearance in May 2005. Conversely, plaintiff contended defendant was charged with the duty to recall the bench warrant to prevent the subsequent arrest warrant, and therefore had the duty to revoke the warrant. Defendant owed no duty to plaintiff to secure the recall of the arrest warrant issued by the Richland County Court of Common Pleas. Plaintiff failed to prove defendant acted negligently.

{¶7} Plaintiff argued he is entitled to damages for arrest and consequential false imprisonment of three days attributable to defendant's failure to ensure the April 21, 2005, arrest warrant was recalled. Plaintiff cited cases decided by this court regarding damage awards for individuals who have proven they were falsely imprisoned. See *Stafford v. Correction Reception Center*, Ct. of Cl. No. 2004-07000-AD, jud (reversed), 2004-Ohio-7085; *Rainey v. Lorain Corr. Fac.* (1997), 121 Ohio App. 3d 428, 700 N.E. 2d 90. Plaintiff's damage in this action is for false imprisonment

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{¶8} A claim encompassing false arrest is treated as a claim for false imprisonment because the essences of the two actions are indistinguishable. *Sharrer v. Ohio State Highway Patrol* (Aug. 9, 1999), Ct. of Cl. No. 97-11797 unreported (citing *Ashcroft v. Mt. Sinai Medical Center* (1990), 68 Ohio App. 3d 359, 364, 588 N.E. 2d 280). Plaintiff's claim alleging false imprisonment is subject to the filing restrictions of R.C. 2743.16(A).

{¶9} R.C. 2743.16(A) provides in relevant part:

{¶10} “\*\*\* civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or *within any shorter period that is applicable to similar suits between private parties.*” (Emphasis added.) The applicable statute of limitations for a cause of action which alleges false imprisonment is R.C. 2305.11(A), and it requires an action for false imprisonment to be commenced within one year after its accrual. *Mickey v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 02AP-539, 2003-Ohio-90; *Haddad v. Dept. of Rehab. & Corr.*, Franklin App. No. 01AP-1130, 2002-Ohio-2813.

{¶11} It is undisputed that plaintiff was released from jail on July 11, 2005. This complaint was not filed until May 14, 2007. As a general rule, a claim for false imprisonment accrues upon plaintiff's release from confinement. *Haddad*, Franklin App. No. 01AP-1130, 2002-Ohio-2813. Plaintiff's claim for false imprisonment accrued upon his final release on July 11, 2005, and his complaint was not filed within one year thereafter.

{¶12} For the foregoing reasons, the court finds that plaintiff's claim for false imprisonment is barred by the one-year statute of limitations and accordingly, judgment shall be rendered in favor of defendant. See *Colston v. Dept. of Rehabilitation and Corr.*, Ct. of Cl. No. 2006-07781-AD, jud, 2007-Ohio-1931.

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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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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RDK/laa

11/14

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