

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

PAUL LOVELACE

Plaintiff

v.

SOUTHEASTERN CORRECTIONAL INSTITUTION

Defendant

Case No. 2008-01502

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} On January 22, 2008, plaintiff, Paul Lovelace, an inmate at Southeastern Correctional Institution, filed a complaint against defendant, Southeastern Correctional Institution. Plaintiff alleges that defendant's agents froze his inmate account, stole money orders and failed to process other money orders in retaliation for him not providing information to defendant. Furthermore, plaintiff alleges he was wrongfully convicted by defendant's Rules Infraction Board ("RIB") of gambling and dealing. Plaintiff seeks damages in the amount of \$704.88.

{¶ 2} Defendant has denied liability in this matter. First, defendant contends the plaintiff is attempting to use the administrative determination process to appeal the decision of RIB. However, defendant asserts this court has no jurisdiction to rehear the decision rendered by the RIB. Second, defendant asserts pursuant to Administrative Rule 5120-5-02(A)(1)¹ and 5120-9-08(K)(8)², defendant had the authority to confiscate

¹ 5120-5-02(A)(1) in pertinent part states:

" . . . any transaction the warden has cause to believe is for an unlawful purpose, and any other source where the warden has cause to believe the transaction is for an unlawful purpose, including but not limited to, fraud, extortion, blackmail, dealing and gambling. Funds received from an unapproved

funds that plaintiff had received from his illegal activity. With respect to the money involved defendant stated in pertinent part:

{¶ 3} “[A]dditional investigation into the matter revealed that thirteen money orders totaling \$1,020.00 were deposited into Plaintiff’s account from unapproved sources (Attachment 10). Of the 1,020.00, \$850.76 remained unspent by Plaintiff. According to the attached August 24, 2006 report to the Warden of SCI (Attachment 10), \$420.00 was returned to the senders of the funds, \$15 stayed in Plaintiff’s account as state pay, and \$415 remains in the confiscated funds account because sender(s) could not be located by SCI staff to allow a return of funds. If the sender is identified, the funds will be returned to the sender. Otherwise, SCI will make proper application to a court with jurisdiction to have the funds deposited into the inmate industrial and entertainment account. Because of Plaintiff’s RIB convictions, the institution does not intend to return the properly confiscated funds to Plaintiff.”

{¶ 4} The defendant submitted a copy of the RIB decision finding the plaintiff guilty of 45, and 44 rules violations and ordered the confiscation of all money.

{¶ 5} On April 28, 2008, plaintiff filed a response to defendant’s investigation report. Plaintiff contends the decision of the RIB was based on a lack of evidence. Plaintiff in essence seeks to overturn the RIB decision and have his funds returned. Plaintiff also contends that defendant had an ulterior motive for pursuing the RIB hearing i.e., to get him to talk about drug dealing activities occurring inside the institution. Plaintiff submitted a letter he asserts he received from Institutional Investigator David French which plaintiff characterizes as a threat. However, this letter may also be interpreted as informing the plaintiff of the consequences of being untruthful to authorities.

{¶ 6} On August 21, 2008, plaintiff filed a motion to compel a decision being rendered in this case.

CONCLUSIONS OF LAW

{¶ 7} 1) The Court of Claims does not have jurisdiction over decisions of the

source will not be accepted.”

² 5120-9-08(K)(8) in pertinent part states:

“If a finding of guilty is made for a rule violation by the RIB panel, and subject to the warden’s approval, the RIB panel may impose the following penalties:

“(8) Order such actions as deemed appropriate”

Rules Infraction Board. *Chatman v. Dept. of Rehabilitation and Correction* (1985), 84-06323-AD; *Ryan v. Chillicothe Institution* (1981), 81-05181-AD; *Rierson v. Department of Rehabilitation* (1981), 80-00860-AD.

{¶ 8} 2) An inmate's appeal of a Rules Infraction Board decision does not relate to civil law, a proper subject for adjudication pursuant to Chapter 2743 of the Ohio Revised Code. Instead, the appeal relates to private rights and remedies involving criminal proceedings and penalties imposed by a disciplinary board. Therefore, it falls outside the Court's exclusive jurisdiction. *Maynard v. Jago* (1977), 76-0581-AD.

{¶ 9} 3) Defendant's actions were in accordance with Administrative Code 5120-9-08(K)(8).

{¶ 10} 4) The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, 39 O.O. 2d 366, 227 N.E. 2d 212, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill* (1964), 176 Ohio St. 61, 26 O.O. 2d 366, 197 N.E. 2d 548. This court does not find plaintiff's remarks concerning defendant's alleged coercion particularly persuasive.

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ENTRY OF ADMINISTRATIVE DETERMINATION

Plaintiff's motion to compel is GRANTED.

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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DRB/laa
8/29
Filed 9/24/08
Sent to S.C. reporter 12/3/08