

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

ABDUL-HAKIM ZAKIY

Plaintiff

v.

OHIO STATE PENITENTIARY

Defendant

Case No. 2008-01782-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Abdul-Hakiym Zakiy, an inmate incarcerated at defendant, Ohio State Penitentiary (“OSP”), stated he authorized the storage of his Chronomatic Table Top Clock, Radio and Tape Player (“radio”) in the OSP property vault until the radio could be mailed out for mandated repairs. On September 11, 2006, OSP staff confiscated the radio from plaintiff’s possession declaring the item contraband.

{¶ 2} 2) Plaintiff alleged OSP employee Sergeant Curtis Tanner removed the contraband radio from the OSP property vault on October 26, 2006 and failed to return the radio. Plaintiff asserted he never regained possession of his confiscated radio. Plaintiff filed this complaint seeking to recover \$79.99, the estimated replacement cost of the alleged missing radio. Plaintiff submitted a copy of a title for his radio issued on January 5, 2008. Plaintiff paid the filing fee.

{¶ 3} 3) Defendant maintained plaintiff’s radio was returned to his possession on October 20, 2006 by OSP employee, Sergeant Curtis Tanner. Defendant submitted a copy of a Contraband Log compiled at OSP for September, 2006. The Contraband

Log confirms a radio was confiscated from plaintiff on September 11, 2006 and was placed in the OSP property vault that same day. The Contraband Log records the confiscated radio was removed from the property vault on October 20, 2006 by Sergeant Tanner and returned to plaintiff. It is seemingly indicated on this Contraband Log that a second radio was received back at the OSP property vault from plaintiff.

{¶ 4} 4) Plaintiff filed a response acknowledging his radio was originally confiscated as contraband on or about September 11, 2006. The radio was declared contraband due to the fact it was altered (screws missing) and therefore impermissible under defendant's internal regulations. Plaintiff acknowledged he received a conduct report for contraband possession in regard to the altered nature of the radio. Plaintiff explained defendant ruled on the conduct report by allowing plaintiff to have the radio sent out of OSP to have replacement screws inserted in the device. Plaintiff specifically denied the altered radio was ever returned to his possession by Sergeant Tanner. Plaintiff disputed any evidence contained in the OSP Contraband Log that indicates a radio was returned to him on October 20, 2006. Plaintiff submitted a copy of a document titled "Contraband Control Slip." This document generated by defendant notes contraband items including a radio were confiscated from plaintiff on September 1, 2006. Under the heading "Contraband/Disposition" is the notation "Destroy 11/16/06." Plaintiff implied his radio was destroyed by defendant.

{¶ 5} 5) On October 8, 2008, this court issued an entry granting plaintiff's motion for discovery in which he requested defendant provide this court with a copy of a video tape from the B-3 housing unit for October 20, 2006 plus a copy of the B Block Den Log Book for October 20, 2006. Defendant failed to comply with the October 8, 2008 entry.

{¶ 6} 6) Plaintiff filed a supplemental response admitting his radio was confiscated as contraband due to its altered condition (screws removed). However, plaintiff explained when his conduct report was heard for contraband possession defendant ruled he could send his radio out of OSP to a repair shop to have the screws replaced. Plaintiff contended the radio was missing from defendant's custody when he attempted to have the device sent from OSP to a repair facility. Plaintiff denied the radio was returned to his possession by Sergeant Tanner as defendant claimed. Plaintiff reasserted his OSP Housing Unit B-3 is equipped with video cameras that

would have filmed Sergeant Tanner entering the area to return a radio to him on October 20, 2006. Plaintiff pointed out that although defendant was ordered by this court to submit video tapes of the B-3 Housing Unit for October 20, 2006, no tapes were submitted. Furthermore, plaintiff maintained Sergeant Tanner in order to enter the B-3 Housing Unit would have been required to sign the log kept for B-3. Defendant again failed to comply with this court's order to submit a copy of the B-3 Unit log for October 20, 2006, which would have constituted evidence of which particular OSP personnel entered the B-3 Housing Unit on October 20, 2006. Plaintiff denied Sergeant Tanner returned his altered radio and suggested "it was not feasible that a veteran officer with the rank of Sergeant would give a radio back to a prisoner in such a condition." Plaintiff further suggested the radio was destroyed when considering the notation on the "Contraband Control Slip," reading "Destroy 11/16/06." Plaintiff again requested this court find liability and award all damages claimed.

CONCLUSIONS OF LAW

{¶ 7} 1) The Supreme Court of Ohio has held that "[t]he language in R.C. 2743.02 that 'the state' shall 'have its liability determined * * * in accordance with the same rules of law applicable to suits between private parties * * *' means that the state cannot be sued for its legislative or judicial functions or the exercise of an executive or planning function involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion." *Reynolds v. State* (1984), 14 Ohio St. 3d 68, 70, 14 OBR 506, 471 N.E. 2d 776; see also *Von Hoene v. State* (1985), 20 Ohio App. 3d 363, 364, 20 OBR 467, 486 N.E. 2d 868. Prison administrators are provided "wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Bell v. Wolfish* (1979), 441 U.S. 520, 547, 99 S. Ct. 1861, 60 L. Ed. 2d 47.

{¶ 8} 2) Prison regulations, including those contained in the Ohio Administrative Code, "are primarily designed to guide correctional officials in prison administration rather than to confer rights on inmates." *State ex rel. Larkins v. Wilkinson*, 79 Ohio St. 3d 477, 1997-Ohio-139, 683 N.E. 2d 1139, citing *Sandin v. Conner* (1995), 515 U.S. 472, 481-482, 115 S. Ct. 2293, 132 L. Ed 2d 418. Additionally, this court has held that "even if defendant had violated the Ohio Administrative Code, no

cause of action would exist in this court. A breach of internal regulations in itself does not constitute negligence.” *Williams v. Ohio Dept. of Rehab. and Corr.* (1993), 67 Ohio Misc. 2d 1, 3, 643 N.E. 2d 1182. Accordingly, to the extent plaintiff alleges that OSP staff failed to comply with internal prison regulations regarding contraband disposition and the Ohio Administrative Code, he fails to state a claim for relief.

{¶ 9} 3) This court has previously 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.

{¶ 10} 4) 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.

{¶ 11} 5) 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.

{¶ 12} 6) 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 lost or destroyed. *Watley v. Ohio Department of Rehabilitation and Correction*, Ct. of Cl. No. 2005-05183-AD; jud, 2005-Ohio-4320; *Watson v. Ohio State Penitentiary*, Ct. of Cl. No. 2007-05229-AD, 2008-Ohio-2848.

{¶ 13} 7) Evidence has shown plaintiff’s radio was altered (screws missing) and consequently was considered impermissible. No recovery can be had for the loss or destruction of impermissible altered property. See *Kemp v. Ohio State Penitentiary*, Ct. of Cl. No. 2006-02587-AD, 2006-Ohio-7247.

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

ABDUL-HAKIYM ZAKIY

Plaintiff

v.

OHIO STATE PENITENTIARY
Defendant

Case No. 2008-01782-AD

Deputy Clerk Daniel R. Borchert

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:

Abdul-Hakiym Zakiy, #253-718
878 Coitsville-Hubbard Road
Youngstown, Ohio 44505

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
770 West Broad Street
Columbus, Ohio 43222

RDK/laa
12/17
Filed 12/31/08
Sent to S.C. reporter 3/13/09