

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

JAMES WATSON

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, et al.

Defendants

Case No. 2008-06784

Judge Clark B. Weaver Sr.

DECISION

{¶ 1} On March 30, 2009, the parties filed cross-motions for summary judgment. On April 16, 2009, defendants filed a response to plaintiff's motion. On April 24, 2009, the court held an oral hearing on the cross-motions for summary judgment.

{¶ 2} Civ.R. 56(C) states, in part, as follows:

{¶ 3} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." See also

Gilbert v. Summit County, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant, the Ohio Department of Rehabilitation and Correction (DRC), pursuant to R.C. 5120.16. Plaintiff alleges that he was incarcerated pursuant to a void judgment entry and that defendant is therefore liable for false imprisonment and negligence. Defendant argues that plaintiff was imprisoned pursuant to a facially valid entry from the Licking County Court of Common Pleas.

{¶ 5} 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. See also *Bennett v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St.3d 107, 109.

{¶ 6} 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 judgment or order of a court, unless it appear that such judgment or order is void.” *Bennett*, supra, at 111, quoting *Diehl v. Friester* (1882), 37 Ohio St. 473, 475.

{¶ 7} In support of the motion for summary judgment, defendants have submitted the affidavit of Melissa Adams, the Chief of DRC’s Bureau of Sentence Computation. Adams’ affidavit states, in relevant part:

{¶ 8} “3. I have personal knowledge of the matters set forth herein which pertain to Inmate James Watson, #448-574.

{¶ 9} “4. In case 99 C.R. 307, James Watson was sentenced for to [sic] 2 years for burglary plus 30 months for violation of Post Release Control in Case No. 97 C.R. 297.

{¶ 10} “5. DRC failed to catch and enforce that 30 month sentence and Watson was released without serving the 30 months sentence for violating PRC. See Attachments 1,3,4 and 5.

{¶ 11} “6. When Watson was subsequently incarcerated on a different conviction, the 30 month sentence was discovered and added on to his sentence. See Attachments 2,3,4 and 5.

{¶ 12} “7. DRC wrote to the sentencing judge and was never told to ignore or disregard the 30 month sanction imposed. Attachment 2.

{¶ 13} “8. Years later, I was contacted by the Ohio Public Defenders Office on behalf of Mr. Watson and they agreed that it was appropriate to impose the 30 month sanction against Watson ordered by the sentencing court. Attachments 4 and 6.

{¶ 14} “9. In 2008, the public defender later inquired concerning whether the judge’s order complied with the recent Hernandez decision. Attachment 6.

{¶ 15} “10. Based upon a review of the sentencing order, DRC properly released Watson because the sentencing order was not in compliance with the Hernandez decision * * *.”

{¶ 16} Plaintiff argues that sentencing entries from the Licking County Court of Common Pleas did not impose a term of post-release control and, for that reason, they were invalid pursuant to the holding in *Hernandez v. Kelly*, 108 Ohio St.3d 395, 2006-Ohio-126.

{¶ 17} In *Hernandez*, the Supreme Court of Ohio held the Ohio Adult Parole Authority could not impose post-release control unless the trial court notified the offender at sentencing that he would be subject to such control and incorporated that notice into a journal entry imposing sentence. “When a defendant is convicted of or pleads guilty to one or more offenses and postrelease control is not properly included in a sentence for a particular offense, the sentence for that offense is void.” *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, ¶ 16. “The effect of determining that a judgment is void is well established. It is as though such proceedings had never occurred; the judgment is a mere nullity and the parties are in the same position as if there had been no judgment.” *Id.* at ¶ 12, quoting *Romito v. Maxwell* (1967), 10 Ohio St.2d 266, 267-268.

{¶ 18} Prior to the *Hernandez* decision, plaintiff had corresponded with DRC's Bureau of Sentence Computation to dispute the 30-month term. A letter attached to Adams' affidavit shows that on August 20, 2005, she advised plaintiff that the sentencing judge had been notified that the 30-month term had been added to his term of imprisonment and that plaintiff should contact the sentencing judge to obtain "a corrected entry" if he did not agree with the sentence computation. In September 2006, plaintiff was further advised that he should consult with his legal counsel about his concern.

{¶ 19} Although plaintiff asserts that defendant had a duty to determine the validity of the sentencing entries in light of the holding in *Hernandez*, the proper remedy when confronted with a sentencing entry that does not meet the requirements set forth in *Hernandez* is to petition the trial court for a revised sentencing entry. See *State v. Talley*, Cuyahoga App. No. 89328, 2007-Ohio-5853, ¶ 11 (holding that an inmate may petition the trial court for post conviction relief on the ground that he was not legally under post-release control due to defects in the sentencing entries).

{¶ 20} Furthermore, the Tenth District Court of Appeals has rejected the argument that an inmate who was confined pursuant to a judgment that was later determined by the Supreme Court of Ohio as "void ab initio" is automatically entitled to recovery for false imprisonment. *Fryerson v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 02AP-1216, 2003-Ohio-2730; *Roberson v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 03AP-538, 2003-Ohio-6473, ¶ 9 (finding that the State is immune from liability even though the facially valid judgment or order was later determined to be void).

{¶ 21} Upon review of the sentencing entries that defendant relied upon to incarcerate plaintiff, the court does not perceive any error which would draw into question the validity of the orders. Additionally, based upon the affidavit of Melissa Adams, the court finds that defendants released plaintiff when they became aware that the privilege initially justifying plaintiff's incarceration no longer existed. Thus, defendants cannot be held liable for false imprisonment.

{¶ 22} Having found that defendants did not breach any duty owed to plaintiff regarding his sentence computation, plaintiff cannot prevail on his negligence claim. As

a result, the court finds that defendants are entitled to judgment as a matter of law. Accordingly, plaintiff's motion for summary judgment shall be denied; defendants' motion for summary judgment shall be granted and judgment shall be rendered in favor of defendants.

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JUDGMENT ENTRY

An oral hearing was conducted in this case upon the parties' cross-motions for summary judgment. For the reasons set forth in the decision filed concurrently herewith, plaintiff's motion for summary judgment is DENIED, defendants' motion for summary judgment is GRANTED, and judgment is rendered in favor of defendants. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

CLARK B. WEAVER SR.
Judge

cc:

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AMR/cmd
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