

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

DA'JUAN BURNS

Plaintiff

v.

OHIO STATE PENITENTIARY

Defendant

Case No. 2008-10994-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Da’Juan Burns, an inmate incarcerated at defendant, Ohio State Penitentiary (OSP), stated that “[o]n or about June 20, 2008 I was issued four green state uniforms that I was not fitted for and that were not my correct size.” Plaintiff pointed out that he complained about the sizing of his state issue clothing to OSP staff and was informed that the clothing would be exchanged. According to plaintiff, he was given proper fitting clothing on or about June 16, 2008, but soon discovered that the items were “severely damaged.” In response, plaintiff filed an “Informal Complaint Resolution” concerning the damaged clothing asserting that he was issued the items in a damaged state “in retaliation for complaining” about the sizing problems he experienced with the original issued items. Plaintiff maintained that he attempted to receive new undamaged state issue uniforms over the next several months and succeeded in having one uniform issued. Plaintiff asserted that OSP staff refused to issue him any additional uniforms, claiming no supply existed, despite the fact that he witnessed distribution of uniforms to fellow inmates.

{¶ 2} 2) Plaintiff contended that defendant owed him a duty to supply sufficient state issue clothing for his needs. Plaintiff further contended that defendant breached the duty to provide him with a sufficient number of properly fitted uniforms. Plaintiff argued that the clothing deprivation on the part of defendant “constitutes a violation of the 14th Amendment of the United States Constitution.” Furthermore, plaintiff asserted that the clothing deprivation by defendant “for over two months constituted deliberate indifference and is a violation of the 8th Amendment of the United States Constitution.” Also, plaintiff asserted that false statements made by OSP personnel concerning lack of uniforms in stock “is retaliatory and constituted a violation of the 1st Amendment of the United States Constitution.” Consequently, plaintiff filed this complaint seeking to recover \$1,025.00 in damages for “pain and suffering, depression, humiliation, embarrassment, mental and emotional distress” he claimed to have suffered as a result of not being issued the proper number of state uniforms. Payment of the \$25.00 filing fee was waived.

{¶ 3} 3) Defendant requested that plaintiff’s claim be dismissed due to this court lacking subject matter jurisdiction over constitutional claims.

{¶ 4} 4) Plaintiff filed a response contending that defendant owed him a duty to provide a reasonable amount of state issue uniforms and breached that duty by issuing him only one uniform. Plaintiff asserted that defendant violated internal policy by depriving him of the proper amount of state issue uniforms.

CONCLUSIONS OF LAW

{¶ 5} 1) 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, 479, 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 that plaintiff alleges that OSP somehow violated internal prison regulations and the Ohio Administrative Code, he fails to state a claim for relief.

{¶ 6} 2) The court construes plaintiff's claim of clothing deprivation is essentially a claim based upon the conditions of his confinement. Inmate complaints regarding the conditions of confinement are treated as claims arising under 42 U.S.C. 1983. *State ex rel. Carter v. Schotten*, 70 Ohio St. 3d 89, 91, 1994-Ohio-37, 637 N.E. 2d 306. Such claims may not be brought against the state in the Court of Claims because the state is not a "person" within the meaning of Section 1983.

{¶ 7} 3) Any claim made as a deprivation of constitutional rights is not cognizable in this court. This court lacks subject matter jurisdiction over alleged violations of constitution rights and alleged violations under Section 1983, Title 42, U.S. Code. See e.g., *Jett v. Dallas Indep. School Dist.* (1989), 491 U.S. 704, 109 S. Ct. 2702, 105 L. Ed. 2d 598; *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App. 3d 170, 528 N.E. 2d 607; *Gersper v. Ohio Dept. of Hwy. Safety* (1994), 95 Ohio App. 3d 1, 641 N.E. 2d 1113. Any constitutional violation claim or claim of federal civil rights violation is not cognizable. See *Howard v. Supreme Court of Ohio*, Franklin App. No. 04AP-1093, 2005-Ohio-2130; *Wright v. Dept. of Rehab. & Corr.* (Mar. 28, 1995), Franklin App. No. 94AP108-1169.

{¶ 8} 4) Concomitantly, any claims involving retaliatory conduct are not cognizable in this court. In *Deavors v. Ohio Dept. of Rehab. and Corr.* (May 20, 1999), Franklin App. No. 98AP-1105, the court held that an inmate's claim regarding retaliatory conduct are properly classified as constitutional claims under Section 1983, Title 42, U.S. Code.

{¶ 9} 5) Furthermore, the court construes plaintiff's claim of deliberate indifference as a constitutional claim. It is well-settled that such claims are not actionable in the Court of Claims. See *Thompson v. Southern State Community College* (June 15, 1989), Franklin App. No. 89AP-114.

{¶ 10} 6) The Supreme Court of Ohio has established that an employer is liable for the tortious conduct of its employee only if the conduct is committed within the scope of employment and if the tort is intentional, the conduct giving rise to the tort must facilitate or promote the business of which the employee was engaged. *Byrd v. Faber* (1991), 57 Ohio St. 3d 56, 565 N.E. 2d 584, citing *Little Miami RR. Co. v. Wetmore* (1869), 19 Ohio St. 110, and *Taylor v. Doctors Hosp.* (1985), 21 Ohio App. 3d 154, 21 OBR 165, 486 N.E. 2d 1249.

{¶ 11} 7) Further, an intentional and willful tort committed by an employee for his own purposes constitutes a departure from the employment, so that the employer is not responsible. *Szydlowski v. Ohio Dept. of Rehab. & Corr.* (1992), 79 Ohio App. 3d 303, 607 N.E. 2d 103, citing *Vrabel v. Acri* (1952), 156 Ohio St. 467, 46 O.O. 387, 103 N.E. 2d 564. The facts of this case, if taken as true, would constitute an intentional tort committed by defendant's employees performed for their own personal business purposes. Thus, following the rationale of *Szydlowski*, plaintiff would not have a cause of action against defendant for intentionally depriving him of clothing.

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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.

MILES C. DURFEY
Clerk

Entry cc:

Da'Juan Burns, #488-914
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
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