

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

DOUGLAS E. DUES

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, et al.

Defendants

Case No. 2009-04432

Judge Clark B. Weaver Sr.

DECISION

{¶ 1} On June 15, 2009, defendants filed a motion for summary judgment pursuant to Civ.R. 56(B). On July 16, 2009, plaintiff filed a combined memorandum contra and cross-motion for summary judgment. On July 21, 2009, the court conducted an oral hearing on defendants' motion. On July 23, 2009, defendants filed a memorandum contra plaintiff's motion for summary judgment. On August 10, 2009, plaintiff filed a reply brief. On August 13, 2009, the court conducted a non-oral hearing on plaintiff's motion.

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

{¶ 4} According to the complaint, plaintiff was arrested in Summit County on July 5, 2006, on drug-related charges and a separate felony warrant from Cuyahoga County. Following his arrest, plaintiff remained in the Summit County jail until August 16, 2006, at which time he was conveyed to the Cuyahoga County jail. On August 24, 2006, the Cuyahoga County Court of Common Pleas sentenced plaintiff to a six-month prison term and ordered the Cuyahoga County sheriff to calculate the amount of jail-time credit that plaintiff was entitled to receive.

{¶ 5} On August 29, 2006, the Cuyahoga County sheriff conveyed plaintiff into defendants' custody. Melissa Adams, the Chief of defendants' Bureau of Sentence Computation, states in an affidavit accompanying defendants' motion that the sheriff provided documentation that plaintiff was entitled to 14 days of jail-time credit. Adams states that based upon plaintiff's sentence and jail-time credit, defendants calculated his release date as February 12, 2007.

{¶ 6} Plaintiff thereafter filed a motion for jail-time credit with the Cuyahoga County Court of Common Pleas which was granted, in part, such that he received an additional five days of credit. As a result, defendants recalculated plaintiff's release date as February 7, 2007.

{¶ 7} On November 13, 2006, defendants conveyed plaintiff to the Summit County jail in order for him to appear in court on the criminal charges filed incident to his July 5, 2006 arrest in that county. On November 29, 2006, he pleaded guilty to those charges and the Summit County Court of Common Pleas sentenced him to concurrent jail terms of 50 days and 30 days, and granted him 60 days of jail-time credit. According to Adams, because the 60 days of jail-time credit exceeded the length of plaintiff's concurrent sentences on the charges, his release date remained unchanged. The parties agree that defendants released plaintiff from their custody on February 7,

2007.

{¶ 8} Plaintiff alleges that out of the 60 days of jail-time credit that the Summit County Court of Common Pleas granted him, 43 days accrued while he was incarcerated in the Summit County jail on both the Summit County charges and the warrant from Cuyahoga County. Plaintiff asserts that he was therefore entitled to have these 43 days of jail-time credit applied toward both his Summit County and Cuyahoga County sentences. According to plaintiff, the Cuyahoga County Court of Common Pleas denied a motion for jail-time credit seeking those 43 days; nonetheless, he contends that he was legally entitled to such credit and that defendants had a duty under R.C. 2967.191 to apply it toward his sentence. Plaintiff thus brings this action for false imprisonment claiming that his sentence lawfully expired on approximately December 27, 2006. Defendants assert that they confined plaintiff at all times pursuant to a valid court order.

{¶ 9} “False imprisonment occurs when a person confines another intentionally ‘without lawful privilege and against his consent within a limited area for any appreciable time.’” *Bennett v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St.3d 107, 109, quoting *Feliciano v. Kreiger* (1977), 50 Ohio St.2d 69, 71. The elements of a false imprisonment claim are: 1) expiration of the lawful term of confinement; 2) intentional confinement after the expiration; and, 3) knowledge that the privilege initially justifying the confinement no longer exists. *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.

{¶ 10} There is no dispute that defendants’ confinement of plaintiff was based upon the sentencing order of the Cuyahoga County Court of Common Pleas, about which plaintiff alleges no defect so as to render it void. The sentencing order thus placed upon defendants both a privilege and requirement to confine plaintiff according to the terms set forth therein. See *Trice v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 07AP-828, 2008-Ohio-1371, ¶13.

{¶ 11} Although plaintiff asserts that he informed defendants that he was entitled

to additional jail-time credit on his Cuyahoga County sentence, R.C. 2967.191 provides that defendants may credit an inmate with only the amount of jail time to which the sentencing court determines he is entitled. *State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio St.3d 476, 478, 2003-Ohio-2061. Thus, defendants could only credit plaintiff's Cuyahoga County sentence with the amount of jail-time credit calculated by the Cuyahoga County Court of Common Pleas, and defendants had no duty under R.C. 2967.191 to determine whether that calculation was accurate. See *Williams v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 09AP-77, 2009-Ohio-3958, ¶15-16.

{¶ 12} Furthermore, to the extent that plaintiff is attempting to appeal the Cuyahoga County Court of Common Pleas' denial of his motion for jail-time credit, this court lacks subject matter jurisdiction. The proper vehicle for challenging the denial of a motion for jail-time credit by the sentencing court is either direct appeal or a motion for correction by the sentencing court. *State ex rel. Corder v. Wilson* (1991), 68 Ohio App.3d 567, 573. A plaintiff who has had the opportunity to take an appeal from his criminal conviction cannot substitute an action in the Court of Claims for a right of appeal in a different court. *Hardy v. Belmont Corr. Inst.*, Ct. of Cl. No. 2004-09631, 2006-Ohio-623, ¶24, citing *Swaney v. Bur. of Workers' Comp.* (Nov. 10, 1998), Franklin App. No. 98AP-299, and *Midland Ross Corp. v. Indus. Comm.* (1992), 63 Ohio Misc.2d 311.

{¶ 13} Based upon the foregoing, the court finds that there are no genuine issues of material fact and 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. All other pending motions are DENIED as moot.

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JUDGMENT ENTRY

An oral hearing was conducted in this case upon defendants' motion for summary judgment, and a non-oral hearing was conducted upon plaintiff's motion 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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