

# 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

ERVIN LAMONT MITCHELL

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS

Defendant

Case No. 2008-03955

Judge J. Craig Wright  
Magistrate Steven A. Larson

## DECISION

{¶ 1} On October 20, 2008, plaintiff filed a motion for summary judgment pursuant to Civ.R. 56(A). On November 12, 2008, defendant filed a motion for leave to file instant a memorandum contra, plaintiff's motion and a cross-motion for summary judgment. On November 19, 2008, plaintiff filed a memorandum contra defendant's motion for summary judgment. On December 16, 2008, plaintiff filed a motion for default judgment. The parties' motions for summary judgment are now before the court on a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶ 2} As an initial matter, defendant's November 12, 2008 motion for leave is GRANTED instant.

{¶ 3} In his motion for default judgment, plaintiff argues that defendant has failed to defend the action inasmuch as defendant has not filed an expert witness list and has not filed a "motion of discovery." Upon review, the December 16, 2008 motion is DENIED.

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

{¶ 5} “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.

{¶ 6} Plaintiff is an inmate in the custody and control of defendant at the North Central Correctional Institution pursuant to R.C. 5120.16. Plaintiff alleges that he is incarcerated pursuant to a void judgment entry and that defendant is therefore liable for false imprisonment. Defendant argues that plaintiff is imprisoned pursuant to two valid entries from the Lucas County Court of Common Pleas. Defendant further argues that, to the extent that plaintiff asserts that the orders are invalid, the Court of Claims lacks jurisdiction to make such a determination.

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

{¶ 8} 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. 437, 475.

{¶ 9} The Supreme Court of Ohio held that “the judgment of conviction is a single document that need not necessarily include the plea entered at arraignment, but that it must include the sentence and the means of conviction, whether by plea, verdict, or finding by the court, to be a final appealable order under R.C. 2505.02.” *Id.* at *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, ¶17. Plaintiff argues that his conviction and sentencing entries from the Lucas County Court of Common Pleas do not meet the requirements set forth in *Baker*.

{¶ 10} However, the proper remedy when confronted with a sentencing entry that does not meet the requirements set forth in *Baker* is to petition the trial court for a revised sentencing entry and then to pursue an action for a writ of mandamus or procedendo. *Dunn v. Smith*, 119 Ohio St.3d 364, 2008-Ohio-4565, at ¶9. Moreover, this court has held that a plaintiff who has had the opportunity to appeal his 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, at ¶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. “R.C. 2743.02 does not embrace jurisdiction to review criminal proceedings occurring in courts of common pleas.” *Donaldson v. Court of Claims of Ohio* (May 19, 1992), Franklin App. No. 91AP-1218; see also *Troutman v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 03AP-1240, 2005-Ohio-334, at ¶10. Accordingly, this court lacks authority to determine whether the entries in question comply with *Baker*.

{¶ 11} In support of its motion for summary judgment, defendant provided certified copies of the journal entries from plaintiff’s criminal case in the Lucas County Court of Common Pleas. Those documents show the following: On January 31, 2007, plaintiff pleaded no contest to two counts of trafficking in cocaine (Exhibit C); On February 26, 2007, plaintiff was sentenced to serve five years in prison for those crimes (Exhibit D). On October 23, 2007, plaintiff was admitted into defendant’s custody and credited with 372 days of jail-time credit. His release date was subsequently determined to be October 5, 2012.

{¶ 12} Upon review of the journal entries that defendant relies upon to incarcerate plaintiff, the court finds that they do not “appear void” and, therefore, that the privilege justifying plaintiff’s incarceration still exists. As a result, the court finds that defendant is entitled to judgment as a matter of law. Accordingly, plaintiff’s motion for summary judgment shall be denied; defendant’s motion for summary judgment shall be granted and judgment shall be rendered in favor of defendant.

## 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](http://www.cco.state.oh.us)

ERVIN LAMONT MITCHELL

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS

Defendant

Case No. 2008-03955

Judge J. Craig Wright  
Magistrate Steven A. Larson

### JUDGMENT ENTRY

A non-oral hearing was conducted in this case upon the parties’ motions for summary judgment and plaintiff’s motion for default judgment. For the reasons set forth in the decision filed concurrently herewith, plaintiff’s motions for default judgment and summary judgment are DENIED; defendant’s motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. 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.

---

J. CRAIG WRIGHT  
Judge

cc:

Jennifer A. Adair  
Assistant Attorney General  
150 East Gay Street, 18th Floor  
Columbus, Ohio 43215-3130

Ervin Lamont Mitchell, #565-181  
North Central Correctional Institution  
P.O. Box 1812  
Marion, Ohio 43301-1812

MR/cmd/Filed January 14, 2009/To S.C. reporter February 10, 2009