

[Cite as *Coleman v. Ohio Dept. of Rehab. & Corr.*, 2015-Ohio-5706.]

EDWIN LOUIS COLEMAN

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2014-00903-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Edwin Louis Coleman, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”), asserting on January 10, 2014, while he was in segregation his personal property was destroyed. Plaintiff contends Sgt. Brown, a Corrections Officer (“CO”) packed up plaintiff’s property and that everything fit in the pack-up except for some cookies and cups that would be destroyed. At that time, Sgt. Brown requested that plaintiff sign the pack-up slip, but plaintiff refused because Sgt. Brown would not answer questions “about [his] state blues being in the pack-up.” Then, Sgt. Brown stated he would repack plaintiff’s property. At 11:35 a.m., Sgt. Brown returned to segregation stating plaintiff’s robe, bowls, two boxes of Little Debbie Swiss Rolls, two large packs of Duplex cookies, and two large coffee cups did not fit in the pack-up and would subsequently be destroyed. Again, plaintiff refused to sign the pack-up receipt. Plaintiff asserted prior to being sent to segregation all his property fit under the 2.4 cubic foot rule.

{¶2} Plaintiff contended proper procedure was not followed since no conduct report was issued for the 2.4 rule violation, no determination was made by the Rules Infraction Board (“RIB”), nor was he given the opportunity to designate whether the property could have been sent home, destroyed, or donated.

{¶3} Plaintiff seeks damages for the destruction of the following items and their values: bath/prayer robe, \$30.00; two boxes Little Debbie Swiss Rolls, two large packs of Duplex cookies, two large coffee cups, and two big microwave bowls, \$20.00. Plaintiff seeks total damages of \$50.00. Plaintiff was not required to submit the \$25.00 filing fee.

{¶4} Defendant submitted an investigation report denying liability in this matter. Defendant's investigation revealed that plaintiff was given the opportunity to send his property home or have it destroyed but plaintiff refused to sign the form. Accordingly, his property was destroyed. Defendant asserted all proper procedures were followed and plaintiff's claim should be denied.

{¶5} Plaintiff filed a response to defendant's investigation report. Plaintiff again reiterated his position that proper procedures were not followed in the destruction of his property. He asserted a conduct report was not issued, nor was a RIB hearing held. Plaintiff submitted a copy of the Decision of the Chief Inspector on a Grievance Appeal dated May 19, 2014, which in pertinent part stated: "Excess property does violate policy: however it appears the disposition of your property was not handled appropriately."

{¶6} Plaintiff asserted that other inmates witnessed these events, however it is the plaintiff's responsibility to present all information he deems to be relevant to his case. The court will not contact plaintiff's witnesses.

CONCLUSIONS OF LAW

{¶7} OAC 5120-9-33 (B) and (D) state:

- a) "(B) Excluding large titled items (e.g., televisions and typewriters etc.), state issued bedding, coats/jackets, and permitted shoes, an inmate may not possess more than 2.4 cubic feet of combined state and personal property unless specifically authorized pursuant to this rule.

- b)** “(D) Each inmate is responsible for ensuring that his personal property remain in conformity with the foregoing limitations. Property in excess of these limitations will be deemed contraband and disposed of pursuant to rule 5120-9-55 of the Administrative Code.”

{¶8} OAC 5120-9-55(A)(2)(b)&(C)(1)(b)&(c)states:

- a)** “(A) There shall be two classes of contraband as defined in the rule. Contraband shall be classified as ‘major’ or ‘minor’ contraband. The distinction shall determine the method or manner of disposition of such contraband.
- b)** “(2) ‘Minor contraband’, as used in this rule, shall refer to items possessed by an inmate without permission and:
- c)** “(b) The quantities in which an allowable item is possessed is prohibited;
- d)** “(C) Disposition of contraband: any item considered contraband under this rule may be confiscated.
- e)** “(1) Minor contraband.
- f)** “(b) Minor contraband received in the mail may be returned to the sender if the inmate agrees to pay postage costs.
- g)** “(c) Minor contraband, valued at one hundred dollars or less, may, thirty days after confiscation, be destroyed, donated, or utilized by the institution for training or other official purposes by the order of the warden when the institution has attempted to contact or identify the owner of the personal property and those attempts have been unsuccessful or the inmate who owns the personal property agrees in writing to the disposal of the property in question.”

{¶9} Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University*, 76-0368-AD (1979).

{¶10} An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Corr. Inst.*, 97-09261-AD (1988).

{¶11} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill*, 176 Ohio St.61, 197 N.E.2d 548 (1964). The court finds plaintiff's version of the facts particularly persuasive concerning the loss of his property especially in light of the decision of the Chief Inspector who stated in pertinent part "it appears the disposition of your property was not handled appropriately." Furthermore, a review of the Disposition of Property form submitted by defendant revealed all of plaintiff's property is listed in the send home on visit or mail out section, with no property listed in the destroy section only the word destroy circled. Finally, defendant did not submit a conduct report or a log listing the contraband property.

{¶12} Therefore, the court finds defendant did not follow the proper procedures as outlined in OAC 5120-9-55 in the destruction of plaintiff's property. Accordingly, plaintiff is granted judgment in the amount of \$50.00.

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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 plaintiff in the amount of \$50.00. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk