

[Cite as *Henton v. Ohio Dept. of Rehab. & Corr.*, 2016-Ohio-5059.]

W.D. HENTON

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2015-00620-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

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FINDINGS OF FACT

{¶1} Plaintiff, W.D. Henton, an inmate incarcerated at defendant's Belmont Correctional Institution ("BeCI"), filed a complaint against defendant, Ohio Department of Rehabilitation and Correction, and alleged that defendant's mailroom procedure were not applied to allow him timely filing in the Supreme Court of Ohio, which ultimately led him to lose his lawsuit. With his complaint, plaintiff provided a letter dated March 10, 2015 that was written and signed by D. Morehead, Sgt/Correctional Counselor. The letter states that "Inmate Henton's legal mail was processed here at Beci sometime in November. The mail he sent out was not approved to be mailed because of monetary reasons. However, the items were not returned to him in a timely fashion, they were lost for a period of time (approximately 45 days). If you have any questions you may contact me to verify these facts at (740) 695-5169 ext. 3511."

{¶2} Plaintiff seeks \$300.00 for "Medical Injuries: (1) Lost to Supreme Court Procedures by Institutional Mailing System, Supreme Court of the State of Ohio" and "Lost of money in mailing fees." Plaintiff was not required to pay the filing fee.

{¶3} Defendant filed its investigation report denying liability for plaintiff's claim. Defendant asserted that plaintiff's mail was not returned to him, but rather to inmate Hart, because plaintiff did not follow proper procedure and attempted to use inmate Hart's account to pay for postage. Further, defendant argued that plaintiff then attempted to use the account of inmate Harris to re-send the same mail. Inmate Harris

was unable to verify if the mail was returned to him due to being in and out of segregation. Defendant stated that when it received the mail in question on January 6, 2016, with the correct postage, it was mailed out per policy.

{¶4} Defendant included with its investigation report a Disposition of Grievance dated April 7, 2015. In the Disposition, the Inspectors Office detailed its interview with Sgt. Morehead, and stated that “After interviewing inmate Henton 651-180 today (4/6/15), I believe that the statement I wrote earlier on his behalf may have been made in error. When speaking to him I discovered that he had sent out his aforementioned Legal Mail on more than one occasion. Upon further reflection of the situation, it is entirely possible that I recalled only the first and last time he sent it out; making it seem as if it was an unusually long time span.”

{¶5} Plaintiff filed a response in which he claimed that defendant has no policy statement as to the length of time it may keep mail until proper postage is paid and cites to the mail regulations contained in OAC 5120-9-17 and 5120-9-18. Further, plaintiff stated that his complaint centers on the containment of his mail being beyond reasonable time to return the mail and wait for proper postage. Finally, plaintiff claimed that there was never a ticket for violation of illegal processing.

#### CONCLUSIONS OF LAW

{¶6} Prison regulations, including those contained in the Ohio Administrative Code, “are primarily designed to guide correction officials on prison administration rather than confer rights on inmates.” *State ex rel Larkin v. Wilkinson*, 79 Ohio St.3d 477, 1997-Ohio-139, 683 N.E.2d 1139, citing *Sandin v. Conner*, 515 U.S. 472, 481-482, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995). 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. Dept. of Rehab. & Corr.*, 67 Ohio Misc.2d 1, 3, 643 N.E.2d 1182 (Ct. of Cl. 1993).

{¶7} It appears from plaintiff's pleadings that he asserted that ODRC, by not timely returning his legal mail, was denying him access to the courts. Access to the courts is a constitutional right guaranteed to all prisoners. *Bounds v. Smith*, 430 U.S. 817, 821, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1976). It is well-settled that the court of claims does not have jurisdiction to hear constitutional claims brought against the state. *Bleicher v. Univ. of Cincinnati Coll. of Med.*, 78 Ohio App.3d 302, 604 N.E.2d 783 (10th Dist. 1992). The state is not a "person" for purposes of 42 U.S.C 1983 actions and has not otherwise submitted to the jurisdiction of this court for claims such as this. *Burkey v. SOCF*, 38 Ohio App.3d 170, 528 N.E.2d 607 (1988); *Glover v. CCI* 2002-02809-AD, (2003). Indeed, claims of denial of court access are to be treated as actions for alleged violations of constitutional rights under 42 U.S.C 1983. Thus, this court is without jurisdiction to hear these claims.

{¶8} Plaintiff has failed to state a claim for which relief can be granted. Therefore, plaintiff's claim is denied.

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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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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