[Cite as *Blakely v. Lingo*, 2013-Ohio-2359.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Eugene Blakely, Jr.	Court of Appeals No. L-12-1245
Appellant	Trial Court No. CI0201107155
v.	
Jeffrey Lingo, et al.	**DECISION AND JUDGMENT**
Appellees	Decided: June 7, 2013

* * * * *

Eugene Blakely, Jr., pro se.

Julia R. Bates, Lucas County Prosecuting Attorney, and
Kevin A. Pituch, Assistant Prosecuting Attorney,
for appellee Jeffrey D. Lingo.

John T. Madigan, Senior Attorney, City of Toledo Law Department,
for appellee Kermit Quinn.

* * * * *

SINGER, P.J.

{¶1} Appellant appeals the judgment of the Lucas County Court of Common Pleas dismissing his complaint for failure to state a claim upon which relief can be granted, pursuant to Civ.R. 12(B)(6). We affirm.

{¶2} Appellant Eugene Blakely, Jr. is serving an 18-year to life term of incarceration for the 2002 murder of Willie McMillan. Appellee Jeffrey D. Lingo is the Assistant Lucas County Prosecuting Attorney who prosecuted appellant's case. Appellee Kermit Quinn is a police detective who testified against appellant.

{¶3} On December 16, 2011, appellant sued appellees, alleging that they conspired to have a witness declared unavailable to appear so that her prior incriminating testimony at an earlier trial could be introduced. This conspiracy, appellant claimed, violated his right to due process and entitled him to relief under 42 U.S.C. 1983, 1985, 1986 and 18 U.S.C. 241 and 242. Appellant sought a declaratory judgment that appellees had violated his rights, an injunction ordering appellees to concede their culpability in this conspiracy and such "other relief" to which he may be entitled. Appellees responded with separate motions to dismiss pursuant to Civ.R. 12(B)(6).

{¶4} The trial court, concluding that a civil claim that would render a criminal conviction or sentence invalid is not cognizable, granted appellees' motions and dismissed the complaint. This appeal followed. Appellant sets forth a single assignment of error:

> The common pleas court abused it's [sic] discretion and deprived the appellant of his right to proceed with a claim relevant to assert a conspiracy to deliberately deprive him of his liberty through a deliberate deprivation of his right to a fair trial. Therein, violating his right to due process of law

which directly violated his right to a fair trial as guaranteed by the Fourteenth Amendment through [sic] the United States Constitution.

{¶5} Review of a judgment granting a Civ.R. 12(B)(6) motion is de novo. *Perrysburg Twp. v. Rossford,* 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5. When ruling on a motion to dismiss for a failure to state a claim upon which relief can be granted, a court must presume the truth of the factual allegations in the complaint and must make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). It must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him or her to recover. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus. The court may not rely on allegations or evidence outside the complaint unless, with reasonable notice to the parties, it treats the motion as a Civ.R. 56 motion for summary judgment. Civ.R. 12(B); *State ex rel. Natalina Food Co. v. Ohio Civ. Rights Comm.*, 55 Ohio St.3d 98, 99, 562 N.E,.2d 1383 (1990).

{¶6} Even assuming, as we must, that appellant's allegations are true, he has still not stated a claim upon which relief can be granted. 18 U.S.C. 241 and 242 are criminal statutes for which no right of private action exists. *Abu-Hussein v. Gates*, 657 F.Supp.2d 77, 81 (D.D.C. 2009). 42 U.S.C 1983 and, by logical extension, sections 1985 and 1986 require proof "that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such

determination, or called into question by a federal court's issuance of a writ of habeas corpus" antecedent to a cognizable claim. *Heck v. Humphrey*, 512 U.S. 477, 486-487, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994). The same is true for an application for declaratory or injunctive relief. *Fugett v. Ghee*, 10th Dist. No. 02AP-618, 2003-Ohio-1510, ¶ 21.

{¶7} Appellant fails to allege that any of the qualifying events apply to him. Indeed, his complaint lists his residence as the Allen Correctional Institution; convicted, he alleges, by the wrongdoing of which he complains. Accordingly, the trial court properly concluded that appellant's complaint failed to state a claim upon which relief can be granted and did not err in dismissing the complaint pursuant to Civ.R. 12(B)(6). Appellant's sole assignment of error is not well-taken.

{¶8} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE