

[Cite as *White v. State*, 2009-Ohio-6828.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93632

HERSHEL WHITE

PLAINTIFF-APPELLANT

vs.

STATE OF OHIO

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Common Pleas Court
Case No. CV-663790

BEFORE: Sweeney, J., Cooney, A.J., and Boyle, J.

RELEASED: December 24, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

JAMES J. SWEENEY, J.:

{¶ 1} Plaintiff-appellant, Hershel White (“White”), appeals from the trial court’s decision that granted defendant-appellee, State of Ohio’s, motion for summary judgment, where he sought a declaration that he was a wrongfully imprisoned person pursuant to R.C. 2743.48. For the reasons that follow, we affirm.

{¶ 2} In 2006, White was convicted by a jury of three counts of criminally usurious transactions in violation of R.C. 2905.22 in the Cuyahoga County Common Pleas Court. The court sentenced White to “one year of community controlled service, 30 days in county jail, and ordered [him] to resign from his job with the City of Cleveland.”¹ His convictions were reversed by this Court in November 2007.² In April 2008, the trial court issued a journal entry staying White’s community control sanction sentence pending the outcome of the State’s appeal to the Ohio Supreme Court. In May 2008, the Ohio Supreme Court denied the State’s appeal and the trial court terminated White’s community control sanctions and ordered costs reimbursed to him.

{¶ 3} On July 21, 2008 and in the Cuyahoga County Common Pleas Court, White filed a complaint for declaratory judgment against the State of Ohio, seeking a declaration pursuant to R.C. 2743.48(A)(5) that he was a wrongfully imprisoned person under R.C. 2305.02 and 2743.48. Both parties moved for

¹*State v. White*, Cuyahoga App. No. 89085, 2007-Ohio-5951, ¶12, appeal not allowed, 117 Ohio St.3d 1477, 2008-Ohio-1841, 884 N.E.2d 1109.

²*Id.*

summary judgment. The trial court granted the State's motion and issued an opinion and order. The court declined to declare White a wrongfully imprisoned person, finding he could not satisfy the requirement of R.C. 2743.48(A)(3) because "he was not sentenced to nor did he serve a period of incarceration in a State Correctional Institution." White now appeals this determination. As both his assignments of error relate to the trial court's decision on the parties motions for summary judgment, they shall be addressed together.

{¶ 4} "I. The trial court erred in granting defendant's motion for summary judgment.

{¶ 5} "II. The trial court erred in overruling plaintiff's motion for summary judgment."

{¶ 6} Summary judgment is appropriate where: "(1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in his favor. The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law." *Zivich v. Mentor Soccer Club*, 82 Ohio St.3d 367, 369-70, 1998-Ohio-389, internal citations omitted.

{¶ 7} "Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of

statutory interpretation. An unambiguous statute is to be applied, not interpreted.”

Sears v. Weimer (1944), 143 Ohio St. 312, paragraph five of the syllabus; followed by *L.J. Minor Corp. v. Breitenbach*, 77 Ohio St.3d 168, 171, 1996-Ohio-325, quoting *Storer Communications, Inc. v. Limbach* (1988), 37 Ohio St.3d 193, 194, other citations omitted (“An unambiguous statute is to be applied, not interpreted”).

{¶ 8} The parties agree that in order to prevail, White must establish the five provisions of R.C. 2743.48(A). R.C. 2743.48(A)(3) required White to establish he was:

{¶ 9} “(3) * * * sentenced to an indefinite or definite term of imprisonment in a state correctional institution for the offense of which the individual was found guilty.”

{¶ 10} White contends he satisfied this requirement by virtue of the 30-day term he served in the county jail as part of his community control sanctions. This is not the equivalent of “an indefinite or definite term of imprisonment in a *state correctional institution*.” (Emphasis added.) *Id.*

{¶ 11} The General Assembly has defined “jail term” differently than a “prison term.” “‘Jail term’ means the term in a jail that a sentencing court imposes or is authorized to impose pursuant to section 2929.24 or 2929.25 of the Revised Code or pursuant to any other provision of the Revised Code that authorizes a term in a jail for a misdemeanor conviction.” R.C. 2929.01(S). A “‘prison term’ includes either of the following sanctions for an offender: (1) a

stated prison term; (2) a term in a prison shortened by, or with the approval of, the sentencing court pursuant to sections 2929.20, 2967.26, 5120.031, 5120.032, or 5120.073 of the Revised Code.” R.C. 2929.01(BB).

{¶ 12} “‘Prison’ means a residential facility used for the confinement of convicted felony offenders that is under the control of the department of rehabilitation and correction but does not include a violation sanction center operated under authority of section 2967.141 of the Revised Code.” R.C. 2929.01(AA). “‘Jail’ means a jail, workhouse, minimum security jail, or other residential facility used for the confinement of alleged or convicted offenders that is operated by a political subdivision or a combination of political subdivisions of this state.” R.C. 2929.01(R).

{¶ 13} It was established by affidavits from the Ohio Department of Rehabilitation and Corrections (“DRC”) staff counsel and the Cuyahoga County Sheriff that the DRC did not operate the Cuyahoga County Jail when White served his jail term there in 2006. The Cuyahoga County Sheriff operated the Cuyahoga County Jail.

{¶ 14} The Cuyahoga County Jail, which is operated by the Cuyahoga County Sheriff, does not qualify as a “state correctional institution,” which is defined by the Ohio Revised Code as follows: “‘State correctional institution’ includes any institution or facility that is operated by the department of rehabilitation and correction and that is used for the custody, care, or treatment of

criminal, delinquent, or psychologically or psychiatrically disturbed offenders.” R.C. 2967.01(A); see, also, R.C. 341.01.

{¶ 15} White believes that because R.C. 2743.48 was enacted in 1986, any references to a “state correctional institution had to be referenced with respect to the law as it existed [sic] prior to July 1, 1996,” when Senate Bill 2 became effective. However, the Amendment Notes to R.C. 2743.48 explicitly indicate that the General Assembly substituted “correctional” for “penal or reformatory” throughout the statute in 1994, and as late as 2002, substituted “correctional” for “penal or reformatory” in parts of the statute. In addition to the clear and unambiguous terms of the statute, the Amendment Notes reflect the General Assembly’s deliberate intent to refer to “state correctional institution” in R.C. 2743.48, even after the enactment of Senate Bill 2.

{¶ 16} In *State v. Knight*,³ the court held that “[a]uthorized community control sanctions include a term of up to six months in jail. R.C. 2929.16(A)(2),” which is not a “prison term.” “[A] jail sentence [served in county jail] is not the equivalent of, or part of, a prison term.”

{¶ 17} This Court has also determined that “time spent in ‘jail’ is not equivalent to serving a prison term.” *State v. Page*, Cuyahoga App. No. 86179, 2006-Ohio-293, ¶9, citing *State v. Edmonson* (1999), 86 Ohio St.3d 324, 328, fn. 1; *State v. Edel*, Cuyahoga App. No. 79343, 2002-Ohio-651; *State v. Lyons*,

³*State v. Knight*, Warren App. No. CA2001-12-111, 2002-Ohio-4129, ¶5.

Cuyahoga App. No. 80220, 2002-Ohio-342; *State v. Cook* (Dec. 7, 2000), Cuyahoga App. No. 77101.

{¶ 18} Alternatively, White urges us to consider the Cuyahoga County Jail to be a state correctional institution due to the provisions of R.C. 5120.161. R.C. 5120.161 permits the DRC to enter an agreement with local authorities to house persons convicted of fourth and fifth degree felonies in jail, in exchange for a per diem fee. White argues that under that circumstance, the county jail should be considered a “state correctional facility.” We need not decide that issue in this case. There was no such agreement between the DRC and Cuyahoga County to house White in the county jail as established by the affidavit of Staff Counsel for the Ohio Department of Rehabilitation and Corrections.

{¶ 19} There are no genuine issues of material fact and reasonable minds could only conclude that White cannot establish he was a wrongfully imprisoned person as defined by R.C. 2743.48(A). He was not “sentenced to an indefinite or definite term of imprisonment in a state correctional institution for the offense of which the individual was found guilty,” as required by the plain, unambiguous language of R.C. 2743.48(A)(3). The assignments of error are overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES J. SWEENEY, JUDGE

COLLEEN CONWAY COONEY, A.J., and
MARY J. BOYLE, J., CONCUR