

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

PRICE MOORER

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2009-02618

Judge J. Craig Wright

ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶ 1} On June 2, 2009, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff did not file a response. The motion is now before the court for a non-oral hearing pursuant to L.C.C.R. 4.

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

{¶ 3} "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 Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean*

United, Inc. (1977), 50 Ohio St.2d 317.

{¶ 4} The facts relevant to the motion are not in dispute. Plaintiff was convicted by a jury in the Hamilton County Court of Common Pleas on charges of improper discharge of a firearm, carrying a concealed weapon, having weapons while under disability, and associated gun specifications. As a result, on April 13, 2006, the common pleas court issued an entry that sentenced plaintiff to a 15-year prison term and provided that he be “given credit for days served.” On April 21, 2006, the Hamilton County sheriff conveyed plaintiff into defendant’s custody. Melissa Adams, the Chief of defendant’s Bureau of Sentence Computation, states in an affidavit accompanying defendant’s motion that the sheriff provided documentation at the time of conveyance that showed plaintiff was entitled to eight days of jail-time credit for the period of April 13-21, 2006. Based upon plaintiff’s sentencing entry and the documentation provided by the sheriff, defendant calculated plaintiff’s release date as April 8, 2021.

{¶ 5} On May 30, 2008, the First District Court of Appeals reversed plaintiff’s conviction for improper discharge of a firearm, but affirmed his other convictions, which had the effect of reducing his aggregate sentence by 12 years. Defendant recalculated plaintiff’s end-of-sentence date as April 11, 2009.

{¶ 6} Thereafter, plaintiff filed a motion with the sentencing court seeking an additional 115 days of jail-time credit, which was granted in an entry dated January 22, 2009. Adams states that defendant received this entry on January 28, 2009, immediately applied the additional jail-time credit to plaintiff’s sentence, and released plaintiff later that day. However, plaintiff alleges that in light of the additional 115 days of jail-time credit, his sentence lawfully expired on or about December 19, 2008. Plaintiff thus brings this action for false imprisonment in the amount of 40 days.¹

{¶ 7} “False imprisonment occurs when a person confines another intentionally

¹The court notes that although plaintiff styles his claim as one for *wrongful imprisonment*, the allegation that defendant confined him beyond his lawful term of incarceration constitutes a claim for *false*

‘without lawful privilege and against his consent within a limited area for any appreciable time * * *.’ *Bennett v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St.3d 107, 109, quoting *Feliciano v. Kreiger* (1977), 50 Ohio St.2d 69, 71. The elements of a false imprisonment claim are: 1) expiration of the lawful term of confinement; 2) intentional confinement after the expiration; and, 3) knowledge that the privilege initially justifying the confinement no longer exists. *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. 473, 475.

{¶ 8} Based upon the allegations of plaintiff’s complaint and the uncontested affidavit testimony of Adams, the only reasonable conclusion to draw is that at all times while plaintiff was in defendant’s custody, he was imprisoned in accordance with the valid judgment of the sentencing court. Therefore, defendant was lawfully privileged and required to confine plaintiff until it learned that such privilege no longer existed. *Williams v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 09AP-77, 2009-Ohio-3958. Once defendant learned on January 28, 2009, that plaintiff was entitled to additional jail-time credit and that his sentence had thus expired, defendant promptly released him. Because defendant did not continue to confine plaintiff after learning that it was no longer privileged to do so, plaintiff cannot prevail on his claim for false imprisonment.

{¶ 9} Based upon the foregoing, the court finds that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law. Accordingly, 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:

J. Thomas Hodges
810 Sycamore Street, Suite 211
Cincinnati, Ohio 45202

Stephanie D. Pestello-Sharf
Assistant Attorney General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

RCV/cmd
Filed October 6, 2009
To S.C. reporter November 17, 2009