

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

STATE OF OHIO,

Plaintiff,

-vs-

AD ARMSTRONG,

Defendant.

CASE NO.: 2019 CV 02478

JUDGE MARY E. MONTGOMERY

**FINAL AND APPEALABLE DECISION
AND ENTRY SUSTAINING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

**DECISION AND ENTRY OVERRULING
MOTIONS FILED BY DEFENDANT ON
JULY 9, 2019 AND FEBRUARY 18, 2020**

This matter is before the Court pursuant to four matters. First, on June 19, 2019, Plaintiff Montgomery County Prosecuting Attorney Mathias H. Heck, Jr. ("Plaintiff") filed his *Plaintiff's Motion for Summary Judgment*. No response was filed by Defendant A.D. Armstrong ("Defendant"). On January 17, 2020, the Court issued an *Order and Entry* in which it directed Plaintiff to submit supplemental evidence in support of his *Motion for Summary Judgment*. On January 31, 2020, Plaintiff filed his *Plaintiff's Supplemental Evidence in Support of Summary Judgment* ("Notice of Supplemental Evidence").

Second, on July 9, 2019, Defendant filed a motion ("July 9 Motion") requesting, *inter alia*, that counsel be appointed to represent him in this matter, and complaining of purported errors in his criminal cases. Third, on February 18, 2020, Defendant filed a motion styled "Motion for Summary Judgment" ("Defendant Motion for Summary Judgment"). Finally, also on February 18, 2020, Defendant filed a motion in which Defendant again complained of purported errors in his criminal cases ("Second February 18 Motion"). No responses to Defendant's three motions have been filed by Plaintiff. These matters are now properly before the Court. For the following reasons, the Court sustains Plaintiff's *Motion for Summary Judgment* and overrules each of the three motions filed by Defendant.

I. FACTS AND PROCEDURAL HISTORY

This matter commenced on May 29, 2019 when Plaintiff filed his *Application to Declare A.D. Armstrong a Vexatious Litigator and Memorandum in Support* (“Complaint”). In his *Complaint*, Plaintiff alleged that Defendant should be declared a vexatious litigator pursuant to Ohio Revised Code Section 2323.52. Plaintiff alleged that “Defendant has filed *pro se* no fewer than 10 appeals and 110 motions, writs, pleadings, and indecipherable documents, almost all of which have been resolved against him by a court. These filings advance substantially the same claims and have been repeatedly deemed meritless by various courts.” *Compl.* at 3. Plaintiff further averred that Defendant’s vexatious conduct arises out of two criminal cases in which Defendant was convicted: Montgomery County Common Pleas Court Case Nos. 1992 CR 00196 (“1992 Case”) and 2004 CR 02162 (“2004 Case”).

In the 1992 Case, Defendant was convicted of aggravated burglary and was sentenced to a term of six years to twenty-five years. *State v. Armstrong*, 2d Dist. Montgomery No. 27413, 2018-Ohio-191, ¶ 2. According to the *Complaint*, Defendant was released on parole on January 16, 1998, after serving 5.5 years. *Compl.* at 3. In the 2004 Case, Defendant was convicted of two counts of felonious assault with attendant firearm specifications. *State v. Armstrong*, 2d Dist. Montgomery No. 20964, 2006-Ohio-1805, ¶ 4-5. Defendant was sentenced to an aggregate term of nine years in the 2004 Case. *Id.* at ¶ 5.

Plaintiff alleged in his *Complaint* that Defendant sought post-conviction relief in a number of different cases filed in different courts: in his two criminal cases, in a civil case filed in Montgomery County and subsequently transferred to Franklin County, in numerous appeals to the Second District Court of Appeals, and in cases filed in federal court. Plaintiff averred that the *pro se* motions, appeals, and other filings that Defendant has made in these cases have all been unsuccessful. Plaintiff alleged that in all of these cases, Defendant made the same meritless argument “that Defendant, according to his math, believes that his prison sentence should terminate, or should have been terminated, in 2017.” *Compl.* at 4. Plaintiff further alleged that “[t]he courts in these cases have reiterated time and time again that Defendant mistakenly believes there was a gun-specification conviction in his 1992 Criminal Case.” *Id.* at 10. Plaintiff requests that this Court declare Defendant to be a vexatious litigator and enter certain orders pursuant to R.C. 2323.52(D). *Id.* at 15.

On June 7, 2019, Defendant filed a handwritten pleading to which Defendant attached several documents. The Court construes Defendant’s June 7, 2019 filing as Defendant’s *Answer* to the *Complaint*.

Among other things, Defendant argues in his *Answer* that his sentence terminated in 2017 and that he is being held unlawfully on a three-year firearm specification.

In his *Motion for Summary Judgment*, Plaintiff contends that this Court should declare Defendant a vexatious litigator based on the following: (1) the filings to which Plaintiff cites in his *Complaint*; and (2) the argument that Defendant advances in his *Answer*. Plaintiff contends that Defendant's argument in his *Answer* is the same argument that this Court and the Second District Court of Appeals have repeatedly rejected. In his *Notice of Supplemental Evidence*, Plaintiff submits as evidence in support of his *Motion for Summary Judgment* ninety-two documents filed in the 1992 Case, in the 2004 Case, and in ten appeals before the Second District Court of Appeals. The ninety-two documents include motions, petitions for writs of habeas corpus, and notices of appeal filed by Defendant, and orders filed by this Court and by the Second District.

In his *July 9 Motion*, Defendant requests the following: (1) appointment of counsel to represent Defendant in his "civil case"; (2) the transfer of his "case" to the correct court, which Defendant appears to argue is the Franklin County Court of Common Pleas; and (3) that the Court address Defendant's "claims," which appear to include false imprisonment, wrongful incarceration, and "double jeopardy." Defendant argues that his sentence has expired and that he is being held unlawfully.

In his *Defendant Motion for Summary Judgment*, Defendant again argues that his sentence has expired and that he is being held unlawfully. Defendant further states that he is filing a civil action against the State. Defendant attaches to his *Motion for Summary Judgment* a number of documents. Finally, in his *Second February 18 Motion*, Defendant makes a number of arguments: that the State is withholding evidence material to his defense; that Defendant is being held unlawfully; that Defendant is entitled to an order granting him summary judgment; that Defendant's constitutional rights have been violated; and that Defendant is entitled to twenty million dollars in damages from the State of Ohio Parole Board, this Court, and the Ohio Department of Rehabilitation and Correction, Bureau of Sentence Computation.

II. LAW AND ANALYSIS

A. *Motion for Summary Judgment*

Pursuant to Civ.R. 56(C), before summary judgment may be granted, a court must determine that "(1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one

conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.” *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, 821 N.E.2d 564, ¶ 6, quoting *Temple v. Wean United, Inc.*, 50 Ohio St. 2d 317, 327, 364 N.E.2d 267 (1977); Civ.R. 56(C). “Before ruling on a motion for summary judgment, the trial court’s obligation is to read the evidence most favorably for the nonmoving party to see if there is a ‘genuine issue of material fact’ to be resolved. Only if there is none does the court then decide whether the movant deserves judgment as a matter of law.” *Byrd v. Smith*, 110 Ohio St.3d 24, 2006-Ohio-3455, 850 N.E.2d 47, ¶ 12.

In order to prevail on a motion for summary judgment, the moving party carries the initial burden to inform the trial court of the basis for the motion and to point to parts of the record showing that no genuine issue of material fact exists. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264 (1996). The moving party “‘bears the burden of affirmatively demonstrating that, with respect to every essential issue of each count in the complaint, there is no genuine issue of fact.’” *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 115, 526 N.E.2d 798 (1988), quoting *Massaro v. Vernitron Corp.*, 559 F. Supp. 1068, 1073 (D.Mass. 1983). The moving party must be able to specifically point to some evidence of the type listed under Civ. R. 56(C) to affirmatively demonstrate that the non-moving party has no evidence to support the non-moving party’s claims. *Id.* The evidentiary materials listed in Civ.R. 56(C) are as follows: “pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact * * *.”

Once the moving party satisfies this burden, in order to avoid a grant of summary judgment, the non-moving party has the reciprocal burden to present evidence to show there is a genuine issue of material fact, as outlined in the last sentence of Civ.R. 56(E):

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party’s pleadings, but the party’s response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

See also Jackson v. Alert Fire & Safety Equip., Inc., 58 Ohio St. 3d 48, 52, 567 N.E.2d 1027 (1991). Civ.R. 56(C) encourages the just and timely disposition of civil actions by requiring a non-moving party to respond to a motion for summary judgment with evidence creating a genuine issue of material fact. *Todd Dev. Co. v. Morgan*, 116 Ohio St.3d 461, 2008-Ohio-87, 880 N.E.2d 88, ¶ 22. The non-moving party is not required to conclusively demonstrate its case, but is rather required only to produce enough evidence to show that there

remains a genuine issue of material fact. *State ex rel. J.J. Detweiler Enters. v. Warner*, 103 Ohio St.3d 99, 2004-Ohio-4659, 814 N.E.2d 482, ¶ 14.

B. Vexatious Litigator Claim

Plaintiff seeks summary judgment on his claim alleging that Defendant is a “vexatious litigator.” “Pursuant to R.C. 2323.52(B), a prosecuting attorney ‘who has defended against habitual and persistent vexatious conduct’ in the courts ‘may commence a civil action in a court of common pleas with jurisdiction over the person who allegedly engaged in the habitual and persistent vexatious conduct to have that person declared a vexatious litigator.’” *Watkins v. Pough*, 11th Dist. Trumbull No. 2016-T-0100, 2017-Ohio-7026, ¶ 37, quoting R.C. 2323.52(B). “‘Vexatious litigator’ means any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court * * *.” R.C. 2323.52(A)(3).

“‘Vexatious conduct’ means conduct of a party in a civil action that satisfies any of the following:

“(a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action.

“(b) The conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

“(c) The conduct is imposed solely for delay.”

R.C. 2323.52(A)(2).

“‘Conduct’ means any of the following:

“(a) The filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, the filing of a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes, or the taking of any other action in connection with a civil action;

“(b) The filing by an inmate of a civil action or appeal against a government entity or employee, the assertion of a claim, defense or other position in connection with a civil action of that nature or the assertion of issues of law in an appeal of that nature, or the taking of any other action in connection with a civil action or appeal of that nature.”

R.C. 2323.51(A)(1); *see also* R.C. 2323.52(A)(1) (“‘Conduct’ has the same meaning as in section 2323.51 of the Revised Code”).

The purpose of the vexatious litigator statute has been described as follows:

“The purpose of the vexatious litigator statute is clear. It seeks to prevent abuse of the system by those persons who persistently and habitually file lawsuits without reasonable grounds and/or otherwise engage in frivolous conduct in the trial courts of this state. Such conduct clogs the court dockets, results in increased costs, and oftentimes is a waste of judicial resources—resources that are supported by the taxpayers of this state. The unreasonable burden placed upon courts by such baseless litigation prevents the speedy consideration of proper litigation.”

Mayer v. Bristow, 91 Ohio St.3d 3, 13, 740 N.E.2d 656 (2000), quoting *Cent. State Transit Auth. v. Timson*, 132 Ohio App.3d 41, 50, 724 N.E.2d 458 (10th Dist.1998). Vexatious litigation serves to “deplet[e] judicial resources and unnecessarily encroach[] upon the judicial machinery needed by others for the vindication of legitimate rights.” *Id.* “At its core, the statute establishes a screening mechanism that serves to protect the courts and other would-be victims against frivolous and ill-conceived lawsuits filed by those who have historically engaged in prolific and vexatious conduct in civil proceedings.” *Id.*

Although the vexatious litigator statute applies to conduct in a civil action, Ohio courts have held that certain postconviction filings by a defendant in a criminal case are civil in nature. *See Watkins* at ¶ 41 (the initial filings prior to conviction and the direct appeal could not be considered for purposes of making a vexatious litigator finding, but postconviction motions, appeals, and original actions were generally of a civil nature and could therefore be considered); *Ferrero v. Staats*, 5th Dist. Stark No. 2018CA00016, 2018-Ohio-3235, ¶ 13 (“Although we caution not every pleading filed after conviction and direct appeal is necessarily of a civil nature, and such pleadings must be examined by the trial court to determine whether they are in fact civil in nature, the trial court correctly found the docket in the instant case reflects an extensive number of filings of a civil nature: multiple postconviction relief petitions, writs of procedendo and mandamus, and public records requests.”)

As an initial matter, the Court must determine what conduct of Defendant may be considered in determining whether Defendant is a vexatious litigator. The evidence filed by Plaintiff in support of his *Motion for Summary Judgment* is the ninety-two exhibits that Plaintiff attached to his *Notice of Supplemental Evidence*. Among these ninety-two exhibits are eleven motions for jail-time credit filed in the 1992 and 2004 Cases and one motion for judicial release filed in the 2004 Case. *See* Exs. 1, 3, 5, 7, 8, 9, 30, 32, 34, 35, 37, 40 to *Notice of Supplemental Evidence*. The Court finds that Defendants’ motions for jail-time credit and motion for judicial release do not constitute “conduct” for purposes of the vexatious litigator statute. Unlike petitions for postconviction relief, original actions, and actions on public records requests, which are civil in nature, the

Court is unaware of any precedent holding that motions for jail-time credit or motions for judicial release are civil in nature. Rather, the Court finds that Defendant's motions for jail-time credit and his motion for judicial release are criminal in nature and that such motions therefore cannot be considered by the Court in determining whether to designate Defendant a vexatious litigator.

The Court also finds that Defendant's filings in federal cases, to which Plaintiff cites in his *Complaint*, cannot factor into the determination of whether Defendant is a vexatious litigator, because the vexatious litigator statute does not refer to proceedings in federal cases. (Citations omitted.) See *Caghan v. Caghan*, 5th Dist. Stark No. 2014 CA 00094, 2015-Ohio-1787, ¶ 86 (filings in federal cases do not constitute vexatious litigation under the vexatious litigator statute).

However, other than the motions for jail-time credit and the motion for judicial release that Plaintiff submitted with its *Notice of Supplemental Evidence*, the Court finds that the remainder of Defendant's filings that Plaintiff submitted are all civil in nature. Upon review of these filings, the Court finds that Plaintiff has met his initial burden of showing the lack of a genuine issue of material fact. As Plaintiff notes in his *Complaint*, the principal argument that Defendant has made throughout most of his filings is that he has been unlawfully incarcerated due to an unlawful sentence. In particular, Defendant argues that the Ohio Department of Rehabilitation and Correction, Bureau of Sentence Computation violated Defendant's constitutional rights by adding three years to his sentence for a gun specification of which Defendant was not convicted. Defendant made this argument in twenty-six of the filings that Plaintiff submitted with its *Notice of Supplemental Evidence*: ten filings in the 1992 Case; two filings in the 2004 Case; two filings in Second District Case Number CA 25948; three filings in Second District Case Number CA 27413; five filings in Second District Case Number CA 28069; three filings in Second District Case Number CA 25801; and one filing in Second District Case Number 26980. In addition, Defendant argued the following in multiple filings: that he is entitled to relief because prison staff are harassing and threatening him; that he wishes to seek monetary damages in a lawsuit alleging the violation of his constitutional rights; and that he is entitled to a writ of habeas corpus.

The Court finds that Defendant's above-referenced arguments are not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law. These arguments have been repeatedly rejected by this Court and by the Second District Court of Appeals. Further, the Court finds that Defendant's conduct is exactly the sort of conduct that the vexatious litigator statute is

designed to address. Defendant's conduct has wasted judicial resources: this Court and the Second District Court of Appeals have had to rule on twenty-six different filings, each of which addressed the same baseless argument that Defendant is being unlawfully incarcerated due to an error in calculating his sentence. For all of the foregoing reasons, the Court finds that Plaintiff met his evidentiary burden on summary judgment of showing the lack of a genuine issue of material fact that Defendant is a vexatious litigator.

The Court further finds that Defendant has failed to meet his reciprocal burden of showing the existence of a genuine issue of material fact. In Defendant's filings in this matter, instead of submitting evidence to counter Plaintiff's argument that Defendant is a vexatious litigator, Defendant repeats the same baseless argument that he is being unlawfully incarcerated. Accordingly, the Court finds that there is no genuine issue of material fact and that Plaintiff is entitled to summary judgment on his *Complaint*.

For all of the foregoing reasons, the Court finds by a preponderance of the evidence that Defendant, A.D. Armstrong, has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in civil actions in the Montgomery County Common Pleas Court and the Second District Court of Appeals. Defendant has habitually, persistently, and without reasonable grounds engaged in conduct that obviously serves merely to harass or maliciously injure another party to a civil action; and Defendant has engaged in conduct that is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law. This Court finds by a preponderance of the evidence that Defendant, A.D. Armstrong, is a vexatious litigator.

Pursuant to R.C. 2323.52(D)(1), Defendant A.D. Armstrong is hereby prohibited from doing any of the following without first obtaining leave of this Common Pleas Court of Montgomery County, Ohio to proceed:

1. Instituting legal proceedings in the court of claims, or in a court of common pleas, municipal court, or county court;
2. Continuing any legal proceedings that Defendant had instituted in the court of claims, or in a court of common pleas, municipal court, or county court prior to the entry of this order; or

3. Making any application, other than an application for leave to proceed under R.C. 2323.52(F)(1), in any legal proceedings instituted by Defendant or another person in the court of claims, or in a court of common pleas, municipal court, or county court.

In accordance with R.C. 2323.52(H), the Clerk of the Montgomery County Common Pleas Court is ordered to send a certified copy of this order to the Supreme Court for publication in a manner that the Supreme Court determines is appropriate and that will facilitate the clerk of the court of claims and a clerk of a court of appeals, court of common pleas, municipal court, or county court in refusing to accept pleadings or other papers submitted for filing by A.D. Armstrong, a vexatious litigator, unless Mr. Armstrong obtained leave to proceed from this Court.

In accordance with R.C. 2323.52(I), whenever it appears by suggestion of the parties or otherwise that A.D. Armstrong has instituted, continued, or made an application in legal proceedings without obtaining leave to proceed from this Court, the court in which the legal proceedings are pending shall dismiss the proceedings or application of Mr. Armstrong.

III. CONCLUSION

For all of the foregoing reasons, the Court sustains Plaintiff's *Motion for Summary Judgment* and overrules the three motions filed by Defendant on July 9, 2019 and February 18, 2020. Plaintiff is hereby designated a vexatious litigator pursuant to R.C. 2323.52(D)(1). As a vexatious litigator, Plaintiff is subject to the requirements set forth above and in R.C. 2323.52.

THIS IS A FINAL APPEALABLE ORDER, AND THERE IS NO JUST REASON FOR DELAY FOR PURPOSES OF CIV.R. 54. IN ACCORDANCE WITH APP.R. 4, ANY PARTY INTENDING TO APPEAL THIS DECISION SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.

To the Clerk of Courts:

Pursuant to Civ.R. 58(B), please serve the attorney for each party and each party not represented by counsel with Notice of Judgment and its date of entry upon the journal.

SO ORDERED:

JUDGE MARY E. MONTGOMERY

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Copies of this document were sent to all parties listed below by ordinary mail:

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General Divison
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Case Number:
2019 CV 02478

Case Title:
STATE OF OHIO vs AD ARMSTRONG

Type:

Order:

So Ordered,

Mary E. Montgomery

Electronically signed by montgomm on 03/10/2020 11:28:10 AM Page 11 of 11

I hereby certify this to be a true and
correct copy.

Witness my hand and seal this 21
day of December 2025

M. J. Kelly
Clerk of Common Pleas
Court of Montgomery County, Ohio
By E. P. Bennett
Deputy