

IN THE COURT OF CLAIMS OF OHIO

DONALD COOK, et al.

Plaintiffs

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2021-00405JD

Judge Patrick E. Sheeran
Magistrate Scott Sheets

ENTRY GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

{¶1} Before the Court is Defendant's October 3, 2022 motion for summary judgment, which the parties have fully briefed. Plaintiffs' complaint asserts claims for false imprisonment and loss of consortium. Defendant asserts that it is entitled to summary judgment because it imprisoned Plaintiff Donald Cook (Plaintiff) pursuant to a facially valid sentencing order and because consortium claims are derivative and cannot stand in the absence of a valid underlying claim. For the following reasons, the Court GRANTS Defendant's motion for summary judgment.

{¶2} Motions for summary judgment are reviewed under the standard set forth in Civ.R. 56(C), which states, in part:

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 summary 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.

"[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of material fact on a material element of the nonmoving party's claim." *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). To meet this initial burden, the moving party must be able to point to evidentiary materials of the type listed in Civ.R. 56(C). *Id.* at 292-293.

{¶3} If the moving party meets its initial burden, the nonmoving party bears a reciprocal burden outlined in Civ.R. 56(E), which states, in part:

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.

Facts

{¶4} In January of 2014, Plaintiff was convicted of felonies in two different cases in the Jackson County Court of Common Pleas (the trial court). In Case No. 13CR0197, Plaintiff was convicted of aggravated arson and sentenced to 7 years in prison, to run concurrently with the sentence in Case No. 13CR0003. The sentencing order from Case No. 13CR0197 does not apply or mention any jail-time credit. (Exhibit A, Wallace Affidavit, ¶ 5-6, Attachment 1 thereto). In Case No. 13CR0003, Plaintiff was convicted of burglary and theft and sentenced to a total of 3 years in prison for both charges, to run concurrently with the sentence in Case No. 13CR0197. In the sentencing order for Case No. 13CR0003, the trial court also ordered that Plaintiff receive 397 days of jail-time credit. *Id.* ¶ 7, Attachment 2 thereto. Moreover, "[b]ecause case number 13CR0197 included the longer sentence, being served concurrently with the other shorter sentence, [defendant] calculated Mr. Cook's initial release date as January 13, 2021." *Id.* at ¶ 8. Jail-time credit is comprised of time that Plaintiff served prior to sentencing as well as the

time between his sentencing and admission into Defendant's custody. Hannah deposition, p. 18-19.

{¶5} Thereafter, in June of 2014, the trial court issued additional sentencing entries in both cases. In Case No 13CR0003, Plaintiff received 402 days jail time credit. In Case No. 13CR0197, Plaintiff received 100 days of jail time credit. Thus, the trial court sentenced Plaintiff to 3 years on one case and 7 years on another. The trial court applied 402 days of jail-time credit to the 3-year sentence and 100 days of jail-time credit to the 7-year sentence. Defendant received these entries on June 23, 2014. As a result of these entries, Defendant calculated Plaintiff's release date as October 11, 2020. Wallace Aff. at ¶ 9-10, Attachment 3 thereto; Hannah Depo., p. 19-21.

{¶6} Plaintiff was admitted into Defendant's custody on January 22, 2014. *Id.* at p. 26. Throughout his incarceration, Plaintiff wrote to Defendant and filed motions with the trial court seeking additional jail-time credit. Wallace Aff. at ¶ 11-13; 16, Attachments 4,5,6 and 8 thereto; Hannah Depo., p. 43, Exhibit 1 thereto.

{¶7} Plaintiff eventually filed an appeal to the Fourth District Court of Appeals who remanded the matter to the trial court. In Plaintiff's appeal, the prosecution for the state conceded that the trial court failed to grant Plaintiff the jail-time credit to which he was due. On August 3, 2020, after the Fourth District remanded the case, the trial court issued another order granting Plaintiff 402 days of jail-time credit in both of his cases. Defendant received this order on August 6, 2020 and released Plaintiff the next day on August 7, 2020. Wallace Aff. at ¶ 14-15, attachment 7 thereto; Complaint ¶ 8; Hannah Depo., p. 117-128.

{¶8} The one-day delay resulted from precautions related to the COVID-19 pandemic as well as the pandemic's effects. From March of 2020 to June of 2021, when Defendant received an order "effectively ending [an inmate's] sentence * * * the inmate's release would generally take place the day after the order was received." The delay resulted from the "need to test inmates being released for Covid-19, and to notify the county to which they were being released if the inmate tested positive." The delay also resulted from "normal pre-release tasks taking longer due to staffing shortages, which were implemented to discourage the spread of the Covid-19 virus in [defendant's] offices and facilities." Some of the various pre-release tasks are outlined in Defendant's

evidence. Wallace Aff. at ¶ 19-20. Defendant also reduced the frequency of mail pick-up due to staffing reductions. Wallace Aff. at ¶ 17.

In July of 2018, Defendant sent Plaintiff a letter which stated:

The court granted 402 days total credit on 13 CR 0003 only. Your controlling case is 13 CR 0197 on which the court granted a total of 100 days credit. * * * If you believe your credit to be incorrect, you should write to your sentencing judge and ask that a corrected amount be awarded and sent to [defendant] in a journal entry. Only the court can award jail credit. No changes will be made to your sentence or release date unless further entries are received from the courts.

Hannah Depo., p. 40, Exhibit 1.

If the 402 days had been applied to the sentences in both cases, Plaintiff would have been released, at the latest, on December 17, 2019. Hannah Depo., p. 31-34; Exhibit 1 thereto; Complaint ¶ 11.¹

Law and Analysis

{¶9} Here, Plaintiff asserts that the proper amount of jail-time credit was not applied to his sentences in accordance with Ohio law. More specifically, Plaintiff asserts that Defendant should have applied the 402 days of jail-time credit to which the trial court originally found he was entitled in Case No. 13CR0003 to both of his concurrent criminal sentences, including the longer 7-year sentence.

{¶10} As stated in *Jackson v. Ohio Dep't of Rehab. & Corr.*, 10th Dist. No. 20AP-233, 2021-Ohio-1642, ¶ 29:

“False imprisonment occurs when a person intentionally confines another, without a lawful privilege and against that person’s consent, within a limited area for any appreciable time.” *Baker v. Dep’t of Rehab. & Corr.*, 10th Dist.

¹ Plaintiff primarily suggests December 17, 2019 as his correct release date but also suggests earlier dates based on the application of earned credit. Earned credit, per Mr. Hannah’s deposition, is credit an inmate earns through participation in activities such as vocational training or education courses. Ultimately, even assuming an issue of fact exists as to Plaintiff’s correct release date, the Court finds that it is immaterial on summary judgment because it is undisputed that Plaintiff was not released until well after his correct release date and because the facts relative to Plaintiff’s sentencing by the Jackson County Common Pleas Court are also undisputed.

No. 11AP-987, 2012-Ohio-1921, ¶ 12, citing *Feliciano v. Kreiger*, 50 Ohio St.2d 69, 71, 362 N.E.2d 646 (1977). To bring a meritorious claim for false imprisonment against the state, an individual must be able to demonstrate: “(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.” *Wash v. Ohio Adult Parole Auth.*, 10th Dist. No. 19AP-830, 2020-Ohio-3385, ¶ 22. Pursuant to R.C. 2743.02, the state may be held liable for false imprisonment of its prisoners. The state may not be held liable on a claim “when the imprisonment is in accordance with an order of a court, unless it appears that the order is void on its face.” *Fisk v. Ohio Dep’t of Rehab. & Corr.*, 10th Dist. No. 11AP-432, 2011-Ohio-5889, ¶ 12, citing *McKinney v. Ohio Dep’t of Rehab. & Corr.*, 10th Dist. No. 09AP-960, 2010-Ohio-2323, ¶ 9. “Thus, the state is immune from a common law claim of false imprisonment when the plaintiff was incarcerated pursuant to a facially-valid judgment or order, even if the facially-valid judgment or order is later determined to be void.” *McKinney* at ¶ 9, citing *Bradley v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 07AP-506, 2007-Ohio-7150, ¶ 11; *Roberson v. Dep’t of Rehab. & Corr.*, 10th Dist. No. 03AP-538, 2003-Ohio-6473, ¶ 9; *Likes v. Ohio Dep’t of Rehab. & Corr.*, 10th Dist. No. 05AP-709, 2006-Ohio-231, ¶ 10.

Further, the determination of “[f]acial invalidity does not require the consideration of extrinsic information or the application of case.” *McKinney v. Ohio Dep’t of Rehab. & Corr.*, 10th Dist. No. 09AP-960, 2010-Ohio-2323, ¶ 12.

{¶11} Here, the Court finds there is nothing on the face of the trial court’s sentencing orders indicating they are invalid. Rather, only through the application of case law is their invalidity apparent. In fact, Plaintiff points to case law regarding the application of jail-time credit in asserting that Defendant falsely imprisoned him, specifically *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856. Plaintiff also acknowledges that any error in failing to apply jail-time credit to both cases belonged to the trial court that sentenced him. (Plaintiff’s Memorandum Contra p. 3). After Plaintiff’s appeal to the Fourth District Court of Appeals, the trial court applied Plaintiff’s 402 days of jail-time credit to both of his

criminal sentences and Defendant released Plaintiff the day after it received the newest sentencing order.

{¶12} Plaintiff also takes issue with Defendant's refusal to disregard the trial court's entries and apply his jail-time credit in contravention of those entries. However, "DRC's role is not to correct a sentencing court's errors and impose the sentence it believes the court should have imposed. To the contrary, DRC is obliged to execute the sentence imposed by the court." *State ex rei. Fraley v. Ohio Dept. of Rehab. & Corr.*, 161 Ohio St.3d 209, 2020-Ohio-4410, 161 N.E.3d 646, ¶ 17, citing *State v. Grimes*, 151 Ohio St.3d 19, 2017-Ohio-2927, 85 N.E.3d 700, ¶ 21 ("It is the responsibility of the [Adult Parole Authority] to carry out the sentence after the court imposes it, not to interpret the law and impose its own sentence based on information in the sentencing entry"), overruled on other grounds, *State v. Hudson*, 161 Ohio St.3d 166, 2020-Ohio-3849, 161 N.E.3d 608.

{¶13} Specifically as to jail-time credit, the application of *Fugate*, and liability for false imprisonment, the 10th District has recognized, in affirming judgment for defendant in similar cases, that the sentencing trial court determines the number of days of jail-time credit to which someone is entitled and that defendant cannot substitute its own judgment for that of the trial court. Defendant also has no duty to investigate or second-guess the amount of jail-time credit. *Bell v. Ohio Dep't of Rehab. & Corr.*, 10th Dist. No. 10AP-920, 2011-Ohio-6559, ¶ 17-18; 20; *MacConnell v. Ohio Dep't of Rehab. & Corr.*, 10th Dist. No. 11AP-572, 2012-Ohio-283, ¶ 12-15: It also bears mentioning that Defendant's failure to contact the court or otherwise help Plaintiff does not impose liability because "the prisoner is responsible for raising a jail-time credit challenge in the sentencing court." *Id.* at ¶ 14.

{¶14} In the final analysis, because Defendant did so pursuant to facially valid sentencing orders, Defendant was privileged to confine Plaintiff until it received the August 3, 2020 sentencing order that applied his 402 days of jail-time credit to both cases. *Griffin v. Ohio Dep't of Rehab. & Corr.*, 10th Dist. No. 10AP-733, 2011-Ohio-2115, ¶ 19 ("[P]laintiff's lawful term of confinement ended * * * when ODRC received the court's order to release plaintiff.") Defendant received the order on August 6, 2020 but did not release Plaintiff until August 7, 2020. However, unlike in *Griffin*, the Court finds that Ms. Wallace's affidavit, offered as supporting evidence in this case, sufficiently explains the one-day delay, i.e. procedures in place due to the COVID-19 pandemic.

{¶15} Given all of the above, Plaintiff's claim for false imprisonment fails as a matter of law as does any derivative loss of consortium claim.

Conclusion

{¶16} For the reasons stated herein, the Court finds 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. All previously scheduled events are VACATED. Court costs are assessed against Plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK E. SHEERAN
Judge

Filed January 20, 2023
Sent to S.C. Reporter 2/2/23