

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

DONALD SHUCK

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2007-07451

Judge J. Craig Wright

DECISION

{¶ 1} On September 29, 2008, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff did not file a response. On November 5, 2008, the court conducted an oral hearing on defendant's motion.

{¶ 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} Plaintiff alleges that on February 22, 2005, the Clermont County Court of Common Pleas sentenced him to a 29-month term of imprisonment under defendant's custody. According to plaintiff, he was entitled to jail-time credit such that his sentence should have expired on or about April 15, 2007. The parties agree that defendant released plaintiff on May 15, 2007. Thus, plaintiff brings this action for false imprisonment in order to recover damages for 30 days of wrongful confinement. Defendant asserts that it confined plaintiff pursuant to a valid court order and that plaintiff therefore cannot establish liability for false imprisonment.

{¶ 5} "False imprisonment occurs when a person confines another intentionally '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.

{¶ 6} In support of its motion for summary judgment, defendant submitted the affidavit of Melissa Adams, chief of defendant's Bureau of Sentence Computation. In her affidavit, Adams states the following:

{¶ 7} "3. [Plaintiff] was admitted to DRC on February 22, 2005 after being convicted of '[d]riving while under the influence of alcohol or drugs.' No jail time credit was given in the entry. A true and accurate copy of the judgment entry is attached as Exhibit A. On February 28, 2005 the Clermont County Court of Common Pleas sent an entry crediting [plaintiff] with 81 days of jail time credit. A true and accurate copy of the judgment entry is attached as Exhibit B.

{¶ 8} “4. On May 31, 2006 the Clermont County Court of Common Pleas sent an entry granting 88 days of jail time credit. The entry states that the 88 days are not additional credit. A true and accurate copy of the judgment entry is attached as Exhibit C.

{¶ 9} “5. On December 18, 2006 [plaintiff’s] motion for judicial release was granted and he was released. A true and accurate copy of the judgment entry is attached as Exhibit D.

{¶ 10} “6. On January 24, 2007, [plaintiff] violated the terms of his release and was sent back to prison. A true and accurate copy of the judgment entry is attached as Exhibit E.

{¶ 11} “7. Upon his return to prison, he was credited 665 [days] of prison time from his service from 2/22/05 to 12/19/06. He also was credited the old jail time credit of 88 days, he had 18 days of earned credit prior to his judicial release and 2 days of new jail credit. His release date was calculated for 5/13/07. A true and accurate copy of the sentencing calculation sheet is attached as Exhibit F.

{¶ 12} “8. On 3/20/07 it was found that [plaintiff] was given 2 days of duplicative credit, therefore his release date changed from 5/13/07 to 5/15/07. A true and accurate copy of the sentencing calculation sheet is attached as Exhibit G.

{¶ 13} “9. [Plaintiff] was released on 5/15/07.”

{¶ 14} Based upon the uncontested affidavit testimony set forth above, the only reasonable conclusion to draw is that defendant was at all times obligated and privileged to confine plaintiff pursuant to valid sentencing orders of the Clermont County Court of Common Pleas. Although defendant “has a mandatory duty pursuant to R.C. 2967.191 to credit an inmate with jail time already served, it is the trial court that makes the factual determination as to the number of days of confinement that a defendant is entitled to have credited toward his sentence.” *State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio St.3d 476, 478, 2003-Ohio-2061.

{¶ 15} To reiterate, plaintiff did not file a response to defendant’s motion; nor did he provide the court with an affidavit or other permissible evidence to support his allegations. As the non-moving party, plaintiff has the burden of producing more than a

scintilla of evidence in support of his claims. *Nu-Trend Homes, Inc. v. Law Offices of DeLibera, Lyons & Bibbo*, Franklin App. No. 01AP-1137, 2003-Ohio-1633, at ¶17.

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

{¶ 17} “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.”

{¶ 18} 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 shall be granted and judgment shall be rendered in favor of defendant.

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JUDGMENT ENTRY

An oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, 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:

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RCV/cmd
Filed January 9, 2009
To S.C. reporter February 10, 2009