

STATE OF MICHIGAN
COURT OF APPEALS

LEON CHARLES WHITE,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED

June 30, 2000

No. 217753

Court of Claims

LC No. 98-016929-CM

Before: Jansen, P. J., and Hood and Saad, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition under MCR 2.116(C)(8) and (10). We affirm.

Plaintiff brought this action seeking damages based on his claim that defendant unlawfully continued to incarcerate him after he served his maximum sentence. Defendant moved for summary disposition, asserting that plaintiff had not completed his properly computed consecutive sentences, and he was not serving an illegal sentence. The trial court granted the motion, finding that plaintiff failed to plead sufficient facts to show that defendant's computation of his release date is incorrect.

On appeal, plaintiff argues that the court prematurely granted summary disposition prior to the filing of his response. The court issued its decision on the date plaintiff's response was due. Where plaintiff did not file a response until after the due date, there is no basis for remanding the matter.

Plaintiff also argues that the trial court erred in making reference to governmental immunity and improper venue under MCR 3.303(A). These grounds were not raised by defendant and the court's comments were not necessary to the decision. The court found that plaintiff failed to present evidence to support a finding that defendant's calculation of his release date was incorrect. MCL 791.234(3); MSA 28.2304(3). Plaintiff has not contested this portion

of the decision. Where plaintiff's incarceration was lawful, the trial court properly granted summary disposition on this claim.

Affirmed.

/s/ Kathleen Jansen

/s/ Harold Hood

/s/ Henry William Saad