

[Cite as *Carter v. Ohio Dept. fo Rehab. & Corr.*, 2001-Ohio-1847.]
 IN THE COURT OF CLAIMS OF OHIO

DEE EMMETT CARTER	:	
Plaintiff	:	CASE NO. 2000-10839
v.	:	<u>ENTRY GRANTING DEFENDANT'S</u> <u>MOTION FOR SUMMARY JUDGMENT</u>
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	:	
Defendant	:	
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On July 6, 2001, defendant filed a motion for summary judgment. To date, plaintiff has not filed a response. On August 24, 2001, plaintiff filed a motion for continuance. This matter is now before the court for a non-oral hearing on defendant's motion.

Civ.R. 56(C) states, in part, as follows:

*** 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, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

Plaintiff, a former inmate in the custody and control of defendant, alleges that defendant is liable for false imprisonment for confining him one hundred thirty-four days beyond his proper release date. Defendant argues that it had an absolute privilege to confine plaintiff until receipt of a court entry modifying plaintiff's original sentence.

On December 4, 1998, plaintiff was sentenced by the Greene County Court of Common Pleas to, *inter alia*, a twelve month prison term and three years of community control. On July 1, 1999, as a result of a community control violation, the court re-sentenced plaintiff to eighteen months incarceration. However, on December 21, 1999, the Greene County Court of Appeals reversed the trial court and modified plaintiff's sentence from eighteen months to twelve months. Upon receipt of the appellate decision, on December 21, 1999, defendant released plaintiff.

The court finds defendant's motion for summary judgment well-taken. Defendant did not intentionally confine plaintiff after gaining knowledge that the privilege justifying confinement no longer existed. *Bennett v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St.3d 107.

For the foregoing reasons, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Plaintiff's motion for continuance is OVERRULED as moot. Court costs are assessed against plaintiff. The clerk

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shall serve upon all parties notice of this judgment and its date
of entry upon the journal.

JUDGE

Entry cc:

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