

favor ***." See, also, *Gilbert v. Summit County*, 104 Ohio St.3d 660, 661, 2004-Ohio-7108; citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} Plaintiff is currently incarcerated in the Mansfield Correctional Institution as a result of his conviction for crimes that he had committed in 1989. He was sentenced to 13 to 25 years, to be served consecutively to three years for a gun specification, and concurrently with a 1½ year sentence for an assault that occurred while he was awaiting trial. Such crimes were committed while plaintiff was on parole from a sentence that he was serving for a 1982 conviction. As a result, plaintiff is required to serve a sentence of 7 to 25 years, consecutively to the sentence imposed for the 1989 crimes. His sentence is not scheduled to end until June 11, 2035.

{¶ 5} In order to prevail on a claim for false imprisonment, plaintiff must prove that he was imprisoned beyond the expiration of his sentence. *Bennett v. Ohio Department of Rehabilitation and Correction, et al.* (1991), 60 Ohio St.3d 107. Because plaintiff's sentence is not scheduled to expire until June 11, 2035, plaintiff's claim for false imprisonment fails as a matter of law.

{¶ 6} Additionally, to the extent that plaintiff has alleged a claim for relief premised upon defendant's failure to provide him with a parole hearing, plaintiff was, in fact, provided with such a hearing on April 22, 2003, pursuant to the decision in *Layne v. Ohio Adult Parole Authority*, 97 Ohio St.3d 456, 2002-Ohio-6719. Plaintiff's next parole hearing date was moved up to June 2009 from December 2010.

{¶ 7} Plaintiff's claims that his constitutional rights have been violated by defendant are not within the jurisdiction of this

court because the state is not a "person" within the meaning of Section 1983, Title 42, U.S.Code. *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App.3d 170. Additionally, this court "lacks jurisdiction and will not act as an appellate court for decisions of the Parole Board, *** the court will not interfere with the classification and placement of prisoners." (Citations omitted.) *Steward v. Department of Rehabilitation and Correction* (1998), 94 Ohio Misc.2d 75, 76.

{¶ 8} Upon review of defendant's motion for summary judgment, the memoranda filed by the parties, the evidentiary materials submitted thereto, and construing the evidence most strongly in plaintiff's favor, no genuine issues of material fact exist and 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. 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

Entry cc:

Dwayne Harris, #211-083
P.O. Box 788
Mansfield, Ohio 44901

Plaintiff, Pro se

Sally Ann Walters
Velda K. Hofacker Carr
Assistant Attorneys General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

Attorneys for Defendant

JLH/LP/cmd

Case No. 2003-07146

- 4 -

ENTRY

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