



Plaintiff testified that while incarcerated at LorCI, he was indicted on the June 15, 2001, offenses.

{¶ 4} The evidence shows that an indictment was issued on July 11, 2001, in Case No. CR-410027, charging plaintiff with ten counts of gross sexual imposition, one count of attempted rape, and two counts of intimidation of a witness. (Defendant's Exhibit A.)

{¶ 5} Plaintiff testified that he was returned to the Cuyahoga County jail on August 8, 2001, for proceedings on those charges.

{¶ 6} However, on September 27, 2001, plaintiff was indicted under Case No. CR-412141 on five additional counts of gross sexual imposition and two additional counts of intimidation of a witness.

(Defendant's Exhibit B.) Thereafter, on March 20, 2002, plaintiff was indicted under Case No. CR-420954 on 16 additional counts of gross sexual imposition, six counts of intimidation of a witness, and one count of attempted rape. (Defendant's Exhibit C.) Plaintiff testified that he remained at the Cuyahoga County jail until June 11, 2003, when he was returned to LorCI to begin serving his prison terms.

{¶ 7} Plaintiff maintains that, because the time served from June 19 through August 8, 2001, relates to the crimes for which he was indicted and sentenced to prison, he is entitled to jail-time credit for those days. In addition, plaintiff contends that he was to receive jail-time credit dating back to June 19, 2001, under the terms of his plea agreement. Plaintiff further maintains that defendant miscalculated his prison term because it unlawfully exercised its own judgment when interpreting the trial court's order.

{¶ 8} In order to prevail on his claim of false imprisonment plaintiff must show that: 1) his lawful term of confinement

expired; 2) defendant intentionally confined him after the expiration; and 3) defendant had knowledge that the privilege initially justifying the confinement no longer existed. *Corder v. Ohio Dept. of Rehab. and Corr.* (1994), 94 Ohio App.3d 315, 318, *Bennett v. Ohio Dept. of Rehab. and Corr.* (1991), 60 Ohio St.3d 107.

{¶ 9} Upon consideration of the evidence, this court finds for the following reasons that plaintiff failed to prove his claim by a preponderance of the evidence.

{¶ 10} On April 16, 2003, plaintiff pleaded guilty to one count of gross sexual imposition in Case No. CR-410027; two counts of gross sexual imposition in Case No. CR-412141; and one count of intimidation in Case No. CR-420954. (A nolle prosequi was entered as to each of the other counts.)

{¶ 11} On June 5, 2003, plaintiff was sentenced as follows:

{¶ 12} 1) Case No. CR-410027, one year, to be served consecutively to the sentence in CR-412141;

{¶ 13} 2) Case No. CR-412141,<sup>1</sup> one year on each of the two counts, to be served consecutively to each other, and concurrently to the sentence in Case No. CR-420954;

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<sup>1</sup> The initial journal entry in Case No. CR-412141, dated June 10, 2003, stated that the sentence on each count was one year, to be served consecutively to each other and concurrent with the one-year sentences in Case Nos. CR-420954 and 410027. (Defendant's Exhibit E.) Therefore, in complying with its statutory duty, defendant calculated that plaintiff's aggregate sentence totaled two years. (Defendant's Exhibit F.) However, on July 10, 2003, the court issued a corrected journal entry for Case No. CR-412141 stating that the sentence in that case was to be served as set forth at 2) above. (Defendant's Exhibit G.) Thus, plaintiff's aggregate sentence totaled three years. While this issue was addressed at length at trial, plaintiff does not dispute that the change was correctly made by defendant and the change did not affect whether or not plaintiff should have been credited for the 50 days at issue.

{¶ 14} 3) Case No. CR-420954, one year, to be served concurrently with the sentences in Case Nos. 412141 and 410027.

{¶ 15} The sentencing entries in each case state that "[plaintiff] is to be given credit for time served. Sheriff's Department to calculate credit." (Defendant's Exhibits G, H, and I.)

{¶ 16} R.C. 2949.12 provides that upon the conveyance of a convicted felon to a state correctional facility, the institution is provided with a copy of the convicted felon's sentence that clearly describes each offense, designates the sentence imposed, and specifies the total number of days of jail-time credit to which the prisoner is entitled. See, also, Ohio Adm.Code 5120-2-04(B).

{¶ 17} Plaintiff was conveyed to LorCI on June 11, 2003. The information provided to defendant designated the sentences imposed and specified, as ordered by the court and provided by the sheriff's department, that plaintiff was to receive 672 days of jail-time credit. The period of time from August 8, 2001, when plaintiff was returned from LorCI to the Cuyahoga County Jail to June 11, 2003, when he was received back at LorCI, equals 672 days.

On that basis, defendant calculated plaintiff's EST to be August 6, 2004.<sup>2</sup> (Defendant's Exhibit J.)

{¶ 18} Defendant has submitted as evidence all of the documents that it had before it when it calculated plaintiff's EST as August 6, 2004. In addition, defendant presented the testimony

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<sup>2</sup>On April 28, 2004, the trial judge issued a journal entry granting plaintiff 307 days jail-time credit in Case No. CR-420954, for which plaintiff was serving one year concurrently with the sentences in Case Nos. 412141 and 410027. (Defendant's Exhibit K.) Although defendant updated plaintiff's sentence computation to reflect this credit, there was no effect on the expiration of the controlling aggregate consecutive sentences of three years with 672 days of credit. (Defendant's Exhibit L.)

of Mickie Rigsby, chief of the Bureau of Sentence Computation. There is nothing in defendant's records that shows that plaintiff was ever granted credit for the 50 days served from June 19, 2001, to August 8, 2001. Although the excerpt of the plea proceedings submitted by plaintiff (Exhibit 5) does show that the prosecutor made a recommendation to the judge that jail-time credit should start on June 19, 2001, there is nothing in the journal entries to reflect that the trial judge accepted that date in issuing its sentences, nor is it reflected in the sheriff's calculations.

{¶ 19} However, defendant's records do show that the offenses for which plaintiff was arrested on June 19, 2001, were not the same as the offenses for which he was subsequently indicted. Rather, the evidence establishes that plaintiff was taken into custody in June due to a violation of post-release control stemming from a past offense. Specifically, defendant's "inmate progression system-offender status update" shows that plaintiff was paroled and placed on post-release control on October 28, 2000. (Defendant's Exhibit M.) The "inmate progression system-days calculation" lists a start date of June 19, 2001, an end date of August 8, 2001, and includes notations that plaintiff arrived at LorCI on July 2, 2001, on a "Blue Holder" for the Adult Parole Authority (APA) and was "not being held on new cases." (Defendant's Exhibit M.) In addition, plaintiff's "booking history" lists Case No. "ST0106" as the case he was booked under on June 19, 2001. The case numbers listed under the date August 8, 2001, are 410027, 412141, and 420954, the cases for which he was sentenced to the three-year term with 672 days of jail-time credit, beginning on August 8, 2001, and ending on June 11, 2003. (Defendant's Exhibit M.)

{¶ 20} Plaintiff correctly noted that prisoners are entitled to credit for time served while awaiting trial for the offenses that brought about their arrest and confinement. Pursuant to R.C. 2967.191: "[t]he department of rehabilitation and correction shall reduce the stated prison term of a prisoner \*\*\* by the total number of days that the prisoner was confined *for any reason arising out of the offense for which the prisoner was convicted and sentenced*, including confinement in lieu of bail while awaiting trial, confinement for examination to determine the prisoner's competence to stand trial or sanity, and confinement while awaiting transportation to the place where the prisoner is to serve the prisoner's prison term." (Emphasis added.) By its own terms, the statute does not provide for jail-time credit for any period of incarceration that arose from facts which are separate and apart from those upon which the prisoner's current sentence is based. *State v. Smith* (1992), 71 Ohio App.3d 302, 304, *State v. Goehring*, Ottawa App. No. OT-03-035, 2004-Ohio-5240.

{¶ 21} In *State ex rel Corder v. Wilson* (1991), 68 Ohio App.3d 567, 572, the court stated that "[t]he law has been and is still clear that, although the Adult Parole Authority is the body who credits the time served, it is the sentencing court who makes the determination as to the amount of time served by the prisoner before being sentenced to imprisonment in a facility under the supervision of the Adult Parole Authority." Thus, plaintiff was also correct in noting that defendant cannot exercise its own discretion in interpreting the trial court's order with respect to application of jail-time credit as allowed under R.C. 2967.191. Similarly, the APA may credit only the amount of jail time

determined by the court. *State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio St.3d 476, 478, 2003-Ohio-2061.

{¶ 22} The court concludes that, for the period of time from June 19, 2001, to August 8, 2001, plaintiff was confined for purposes that were separate and apart from those upon which his subsequent three-year sentence was based. The court further concludes that the sentencing judge simply did not choose to grant jail-time credit back to the date suggested at the plea proceedings; thus, defendant did not exercise its own discretion in interpreting the judge's entries and applying 672 days of jail-time credit beginning at August 8, 2001. In short, defendant correctly calculated plaintiff's EST.

{¶ 23} Accordingly, plaintiff has not shown that his lawful term of confinement expired; that defendant intentionally confined him after the expiration; or that defendant had knowledge that the privilege initially justifying the confinement no longer existed. See *Corder*, supra.

{¶ 24} For the foregoing reasons, judgment is recommended for defendant.

{¶ 25} A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).

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STEVEN A. LARSON  
Magistrate

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