

[Cite as *Norris v. Ohio Dept. of Rehab. & Corr.*, 2005-Ohio-3959.]

IN THE COURT OF CLAIMS OF OHIO
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ROBERT LEE NORRIS	:	
Plaintiff	:	CASE NO. 2004-07824
	:	Judge Joseph T. Clark
v.	:	Magistrate Steven A. Larson
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, et al.	:	<u>DECISION</u>
Defendants	:	
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{¶ 1} On May 19, 2005, defendants filed a motion for summary judgment pursuant to Civ.R. 56(C). Plaintiff filed a response on June 6, 2005. Defendants’ motion is now before the court for a non-oral hearing pursuant to L.C.C.R. 4(D).

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

{¶4} Plaintiff is an inmate in the custody and control of defendant pursuant to R.C. 5120.16 at the Richland Correctional Institution in Mansfield, Ohio. He was incarcerated in September 1993 following a trial in the Stark County Court of Common Pleas where he was found guilty of one count of kidnaping and two counts of rape. He was sentenced by that court to a consecutive, indeterminate term of 15-25 years on each count and fined \$10,000 on each count.

{¶5} Having exhausted his state remedies, plaintiff petitioned the United States District Court for the Northern District of Ohio for writ of habeas corpus. The court denied the petition and upon appeal to the United States Court of Appeals, Sixth Circuit, the Court stated:

{¶6} "We understand appellant's frustration with the disorderly and confusing method by which he was sentenced in state court. *** Ohio courts may amend a journal entry nunc pro tunc in order to correct any errors so that the final sentencing entry accurately reflects the penalty imposed at the sentencing hearing. See *State v. Greulich*, 61 Ohio App.3d 22, 572 N.E.2d 132, 134 (1988). We emphasize that appellant cannot expect to benefit from such clerical errors, ***." (Emphasis added.) *Norris v. Schotten* (1998), 146 F.3d 314.

{¶7} Plaintiff now seeks an award of damages for false and/or wrongful imprisonment. Under Ohio law, the elements of false imprisonment 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; *Bennet v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St.3d 107. "[A]n 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." *Bennet*, supra, at 111, citing *Diehl v. Friester* (1882), 37 Ohio St. 473, 475. Upon review of the federal appellate court's decision, this court finds that the alleged clerical errors in the Stark County court's sentencing entries did not affect the validity of plaintiff's convictions and sentence. Accordingly, defendants are entitled to judgment as a matter of law as to that claim.

{¶ 8} In addition, in order to prevail on a claim for wrongful imprisonment in Ohio, plaintiff is required to follow the statutory procedures set forth in R.C. 2743.48(A)(4) and 2305.02. Specifically, plaintiff must first obtain a determination from a court of common pleas that he is a wrongfully imprisoned individual before filing an action in this court. Plaintiff has presented no evidence that he has obtained such a determination. Therefore, defendants are entitled to judgment as a matter of law as to plaintiff's claim for wrongful imprisonment.

{¶ 9} Finally, to the extent that plaintiff has brought claims against the Ohio Adult Parole Authority for not granting him parole in the years since his initial incarceration, his claim must also fail. In *Ross v. Shoemaker* (1984), 3 Ohio App.3d 31, the Tenth District Court of Appeals held that "an inmate may not sue the state in the Court of Claims for an alleged illegal procedure in the parole process ***." In short, there exists no cause of action in the Court of Claims for alleged failure to parole an inmate.

{¶ 10} Upon review, and construing the evidence most strongly in plaintiff's favor, the court finds that no genuine issues of material fact exist and that defendants are entitled to judgment as

a matter of law. Accordingly, defendants' motion for summary judgment shall be granted.

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: :

A non-oral hearing was conducted in this case upon defendants' motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendants' motion for summary judgment is GRANTED and judgment is rendered in favor of defendants. 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.

JOSEPH T. CLARK
Judge

Entry cc:

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