

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

BRIAN MCKINNEY

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2005-06465

Judge Joseph T. Clark

DECISION

{¶ 1} On June 29, 2009, defendant filed a motion for summary judgment pursuant to Civ.R. 56. On July 27, 2009, plaintiff filed a memorandum contra and a cross-motion for summary judgment¹ and, on August 7, 2009, defendant filed a memorandum contra plaintiff's motion for summary judgment. On August 19, 2009, the court conducted an oral hearing on the motions.

{¶ 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

¹By entry dated July 10, 2009, plaintiff was granted an extension of time to file his response.

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 *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} Plaintiff filed this action alleging a claim of false imprisonment. The facts giving rise to the case are not disputed.

{¶ 5} On March 18, 1998, plaintiff entered a plea of no contest in the Fairfield County Court of Common Pleas to one count of complicity to commit involuntary manslaughter. As a result, plaintiff was sentenced to a term of three years of incarceration. (Defendant's Exhibit C.) On June 22, 1998, the sentencing court granted plaintiff's motion for judicial release and ordered that he be placed under community control for a period of five years. (Defendant's Exhibit D.) On May 28, 2003, the state of Ohio filed a motion to revoke the community control and, on May 30, 2003, a hearing was held at which time the sentencing court found probable cause to believe that plaintiff had committed the alleged violation. On October 3, 2003, the revocation hearing was conducted and plaintiff admitted that he had violated the terms of his community control. On October 10, 2003, the sentencing court issued an entry revoking plaintiff's community control and ordering reinstatement of the original three-year sentence. (Defendant's Exhibit E.)

{¶ 6} Plaintiff appealed the revocation determination. On July 24, 2004, the Fifth District Court of Appeals issued an entry reversing the judgment of the sentencing court, based upon its opinion that the court had lacked jurisdiction to revoke plaintiff's community control. *State v. McKinney*, Fairfield App. No. 03CA083, 2004-Ohio-4035. On July 27, 2004, the Bureau of Sentence Computation received notice of the court of appeals' reversal and plaintiff was released from incarceration that day.

{¶ 7} Plaintiff contends that the October 10, 2003 revocation entry was void ab initio and, thus, that defendant was without lawful privilege to confine him. Defendant asserts that plaintiff cannot establish liability for false imprisonment because it at all times confined plaintiff pursuant to a valid court order.

{¶ 8} “False imprisonment occurs when a person confines another intentionally ‘without lawful privilege and against his consent within a limited area for any appreciable time, however short.’” *Bennett v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St.3d 107, 109, quoting *Feliciano v. Kreiger* (1977), 50 Ohio St.2d 69, 71. The elements of a false imprisonment claim 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, 318.

{¶ 9} In reversing the sentencing court’s October 10, 2003 entry, the court of appeals relied upon R.C. 2951.09² and the holding in *Davis v. Wolfe*, 92 Ohio St.3d 549, 2001- Ohio-1281, in concluding that “the fact the State initiated the probation violation proceedings during the original probation period does not extend the trial court’s jurisdiction once the term of probation has expired.” *McKinney*, supra, at ¶19. The court was of the opinion that “[d]ischarge is required even if the alleged probation violation * * * could have resulted in a valid probation revocation and imposition of sentence if it had been timely prosecuted.” *Id.* quoting *Davis*, at 551.

{¶ 10} There is no dispute that the sentencing court erred in reinstating plaintiff’s original sentence; nevertheless, the question in this case is whether defendant intentionally confined plaintiff without lawful privilege. It is well-established that “an 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.” *Bennett*, supra quoting *Diehl v. Friester* (1882), 37 Ohio St. 473, 475. (Additional citations omitted.) Plaintiff contends that the October 10, 2003 entry clearly appeared to be void on its face inasmuch as it specified June 22, 1998, as the date that his five-year term of community control commenced, and the date of the entry was more than three months beyond the date when such term had expired on June 22, 2003.

²R.C. 2951.09 provided in pertinent part that “[a]t the end or termination of the period of probation, the jurisdiction of the judge or magistrate to impose sentence ceases and the defendant shall be discharged.” The statute was repealed effective January 1, 2004.

{¶ 11} Upon consideration of the parties' memoranda and the oral arguments asserted at the hearing, the court finds defendant's motion for summary judgment to be well-taken. Although the revocation entry does include the date that plaintiff's term of community control commenced, the document as a whole does not contain any apparent defect which would raise an issue concerning the sentencing court's jurisdiction. Defendant has no independent authority to second-guess the sentencing court's entries or to substitute its own judgment. See *Bennett*, supra; *Corder*, supra. Thus, defendant had a legal obligation under R.C. 2949.12 to confine plaintiff until it was put on notice to do otherwise. It has consistently been held that liability for false imprisonment does not attach where a facially valid judgment or order is later determined to be void. *Bradley v. Ohio Dept of Rehab. & Corr.*, Franklin App. No. 07AP-506, 2007-Ohio-7150, ¶11 citing *Roberson v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 03AP-538, 2003-Ohio-6473, ¶9; *Likes v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 05AP-709, 2006-Ohio-231, ¶10.

{¶ 12} Plaintiff concedes that he was promptly released once defendant received the appellate court's judgment entry. This court has held that, even where a plaintiff establishes that he was incarcerated as a result of an incorrect sentencing order, "the law does not permit the court to impute these errors and impose liability upon defendant for false imprisonment." *Pilz v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2003-04881, affirmed Franklin App. No. 04AP-240, 2004-Ohio-4040. Accordingly, the court concludes that defendant did not intentionally confine plaintiff without lawful privilege.

{¶ 13} Based upon the foregoing, the court finds that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law. Accordingly, plaintiff's motion for summary judgment shall be denied, defendant's motion for summary judgment shall be granted, and judgment shall be rendered in favor of defendant.

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JUDGMENT ENTRY

An oral hearing was conducted in this case upon the parties' cross-motions for summary judgment. For the reasons set forth in the decision filed concurrently herewith, plaintiff's motion for summary judgment is DENIED, 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.

JOSEPH T. CLARK
Judge

cc:

Miles D. Fries
320 Main Street
P.O. Box 190
Zanesville, Ohio 43702-0190

Stephanie D. Pestello-Sharf
Assistant Attorney General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

LH/cmd
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