

[Cite as *Downey v. Dept. of Rehab. & Corr.*, 2017-Ohio-9419.]

WILLIAM F. DOWNEY

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2016-00809

Judge Patrick M. McGrath
Magistrate Holly True Shaver

DECISION

{¶1} On March 24, 2017, the court issued an order setting the dispositive motion deadline for October 20, 2017. On October 20, 2017, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On October 23, 2017, the court issued a notice of a non-oral hearing on defendant’s motion for November 17, 2017. On November 27, 2017, plaintiff filed both an untimely motion for an extension of time to file his own motion for summary judgment, and an untimely combined motion for summary judgment and response to defendant’s motion. On December 7, 2017, defendant filed a memorandum contra to plaintiff’s motions.

{¶2} In his motion, counsel for plaintiff explains that defendant’s motion was sent to his email “spam” folder, and counsel for plaintiff was not aware that a motion had been filed until after the dispositive motion deadline. Counsel for plaintiff also states that he became ill while he was working on his own motion for summary judgment and was delayed by his illness. Counsel for plaintiff does not state that he did not receive the court’s March 24 order or October 23 notice.

{¶3} L.C.C.R. 4(C) states, in pertinent part: “Each party opposing the motion shall serve and file, within *fourteen days* after service upon him of movant’s motion, a brief written statement of reasons in opposition to the motion and the authorities upon which he relies. * * * Failure to file a written statement in opposition to the motion may be cause for the court to grant the motion as filed.” (Emphasis added.)

{¶4} Civ.R. 6(B) states, in pertinent part: “When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect * * *.”

{¶5} Upon review of his motion, the court finds that counsel for plaintiff has failed to show that his failure to timely file a motion or response was the result of excusable neglect. Accordingly, plaintiff’s motion for an extension of time is DENIED, and his untimely motion and response to defendant’s motion shall not be considered by the court. However, even if plaintiff’s untimely motion and response were considered, plaintiff has provided no additional evidence permitted by Civ.R. 56; rather, the attachments he provides are the same three exhibits that are attached to his complaint.

{¶6} Defendant’s motion is now before the court for a non-oral hearing pursuant to Civ.R. 56 and L.C.C.R. 4.

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

{¶8} On February 21, 2007, plaintiff was sentenced to seven years in prison for one count of felonious assault, a felony of the first degree, in the Mercer County Court of Common Pleas. On September 24, 2007, plaintiff was sentenced to nine months in prison for one count of unlawful sexual conduct with a minor, a felony of the fourth degree, in the Darke County Court of Common Pleas. Plaintiff's prison terms were served concurrently. Plaintiff was released from prison on February 15, 2014.

{¶9} In October 2014, the Adult Parole Authority (APA) requested a holder to detain plaintiff for alleged violations of the terms of his post-release control (PRC). Plaintiff was subsequently imprisoned for PRC violations in Mercer County. On August 15, 2015, plaintiff was released from prison and returned to PRC supervision. On November 3, 2015, the Third District Court of Appeals found that the PRC portion of plaintiff's sentence was void, because the trial court's sentencing entry failed to notify him of the length of the term of PRC. On November 6, 2015, the APA terminated plaintiff's PRC supervision.

{¶10} Plaintiff alleges that he was falsely imprisoned for 268 days, because the PRC portion of his sentencing entry was determined to be void. Defendant asserts that it is entitled to summary judgment on plaintiff's claim of false imprisonment because there was nothing on the face of the sentencing entries to show that they were invalid, and that plaintiff's claim is barred by the applicable statute of limitations.

{¶11} "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.*, 60 Ohio St.3d 107,109 (1991), quoting *Feliciano v. Kreiger*, 50 Ohio St.2d 69, 71 (1977). "Pursuant to R.C. 2743.02(A)(1), the state may be held liable for the false imprisonment of its prisoners." *Id.* at paragraph two of the syllabus. The elements for false imprisonment of an inmate beyond a lawful term of incarceration 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., 94 Ohio App.3d 315, 318 (10th Dist.1994). “An action for false imprisonment cannot be maintained, however, when the imprisonment is in accordance with the judgment or order of a court, unless it appears such judgment or order is void on its face.” *Pruitt v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 13AP-117, 2013-Ohio-3743, ¶ 7. “Thus, the state is immune from a common law claim of false imprisonment when the plaintiff was incarcerated pursuant to a facially-valid judgment or order, even if the facially-valid judgment or order is later determined to be void.” *McKinney v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-960, 2010-Ohio-2323, ¶ 9.

{¶12} To support its motion, defendant filed the affidavit of Vicki Wallace, Correction Records Sentence Computation Auditor at the Bureau of Sentence Computation, who avers, in part, as follows:

{¶13} “3. On June 28, 2006, Downey was admitted to DRC under number 499-971 for a post release control sanction of 247 days. His release date was properly calculated as March 1, 2007. A true and accurate copy of this PRC Sanction is attached as Exhibit A.

{¶14} “4. On February 21, 2007, Downey was assigned a new number, 545-954, for a sentence from Mercer County in Case No. 06CRM096. He was sentenced to 7 years for Felonious Assault, felony 1 with 0 days of jail time credit concurrent with Case No. 05CR13345 from Darke County which was the 247 days for the post release control sanction. Thus, his new release date was properly calculated as February 18, 2014. Attached as Exhibit B are true and accurate copies of Downey’s sentencing documents related to his Mercer County Case.

{¶15} “5. On September 24, 2007, Downey received another sentence from Darke County in Case No. 07CR13927. He was sentenced to 9 months for Unlawful Sexual Conduct with a Minor, felony 4 with 0 days of jail time credit concurrent with the Mercer County sentence. Thus, his release date was properly calculated as February 18, 2014. On February 15, 2014, Downey was released on post release control which

included 3 days of earned credit. Attached as Exhibit C are true and accurate copies of Downey's sentencing documents relative to Darke County in Case No. 07CR13927.

{¶16} "6. Effective December 19, 2014, Downey received a post release control sanction of 240 days. His release date was properly calculated as August 15, 2015. A true and accurate copy of this PRC Sanction is attached as Exhibit D.

{¶17} "7. On May 6, 2015, the Bureau received an entry from the Darke County court vacating his post release control in Case No. 07CR13927. A true and accurate copy of this entry is attached as Exhibit E. On May 7, 2015, the Adult Parole Authority was contacted and informed that Downey was still under post release control for Case No. 06CRM096 from Mercer County. A true and accurate copy of the notes from this communication is attached as Exhibit F. Downey was released on August 15, 2015, and returned to PRC supervision.

{¶18} "8. On November 6, 2015, the Adult Parole Authority terminated Downey's PRC supervision due to an appellate court decision vacating Downey's PRC. A true and accurate copy of the documentation of Downey's termination from PRC supervision is attached as Exhibit G."

{¶19} There is no dispute that plaintiff's confinement at all times occurred pursuant to sentencing entries, copies of which are attached to his complaint. Although plaintiff alleges that the court of appeals found that the PRC portion of his sentencing entries was void, his allegations do not challenge the facial validity of either entry for purposes of establishing a common law false imprisonment claim. "Facial invalidity does not require the consideration of extrinsic information or the application of case law." *McKinney, supra*, at ¶ 12; *see also Gonzales v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 08AP-567, 2009-Ohio-246, ¶ 10; *Beachum v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 11AP-635, 2012-Ohio-673, ¶ 7. Construing the evidence most strongly in plaintiff's favor, there was nothing on the face of either sentencing entry to show that plaintiff's lawful term of confinement had expired. Furthermore, defendant "ha[s] no discretion to release an inmate until it receive[s] an

entry indicating [defendant] no longer [is] privileged or justified in confining the inmate.” *Trice v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 07AP-828, 2008-Ohio-1371, ¶ 19. Reasonable minds can conclude only that plaintiff was imprisoned in accordance with the judgment or order of a court, and that judgment or order was not void on its face. Accordingly, defendant is entitled to summary judgment as a matter of law on plaintiff's claims.

{¶20} Defendant also argues that plaintiff's claim of false imprisonment is barred by the applicable statute of limitations. The court agrees.

{¶21} R.C. 2743.16(A) states, in relevant part: “civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action *or within any shorter period that is applicable to similar suits between private parties.*” (Emphasis added.)

{¶22} R.C. 2305.11(A) states, in relevant part: “An action for * * * false imprisonment * * * shall be commenced within one year after the cause of action accrued * * *.” A claim for false imprisonment accrues, at the latest, when confinement ends. *Robinson v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 10AP-550, 2011-Ohio-713, ¶ 14. Plaintiff was released from confinement on August 15, 2015. Plaintiff filed his complaint in this court on November 2, 2016. Accordingly, construing the evidence most strongly in plaintiff's favor, the only reasonable conclusion is that plaintiff's claim of false imprisonment was not timely filed. For the foregoing reasons, judgment shall be rendered in favor of defendant.

PATRICK M. MCGRATH
Judge

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JUDGMENT ENTRY

{¶23} A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Plaintiff's untimely motion for summary judgment is DENIED. All previously scheduled events are VACATED. 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.

PATRICK M. MCGRATH
Judge

cc:

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