

[Cite as *Washington v. Dept. of Rehab & Corr.*, 2017-Ohio-8467.]

JIMMIE L. WASHINGTON

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2017-00029

Judge Patrick M. McGrath
Magistrate Gary Peterson

ENTRY GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

{¶1} On August 16, 2017, defendant filed a motion pursuant to Civ.R. 56(B) for summary judgment. Plaintiff did not file a response. The 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 *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶4} According to the complaint, plaintiff was an inmate in the custody and control of defendant. The complaint provides that on December 15, 2010, plaintiff was

sentenced to a term of imprisonment, apparently following an appeal from his original sentence. Plaintiff alleges that his lawful term of imprisonment expired when the “trial court failed to invoke a timely *denovo* ‘sentencing’ hearing after the Court of Appeals remand. The trial court lost its jurisdiction to impose a sentence.” Complaint at ¶ 7. The complaint further provides that due to the alleged delay in holding a sentencing hearing, the sentence imposed on December 15, 2010 is void. The complaint concludes that “plaintiff suffered false imprisonment dating from December 15, 2010 until his release on March 24, 2016.” *Id.* at ¶ 9.

{¶5} Defendant argues that the court lacks jurisdiction to review the decisions of other courts and that, to the extent plaintiff challenges the trial court’s jurisdiction to impose a sentence, the court lacks jurisdiction to consider such a claim. Indeed, the court has no appellate jurisdiction to review any alleged errors in the sentencing entry. *Foreman v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 14AP-15, 2014-Ohio-2793, ¶ 16.

{¶6} Turning to plaintiff’s claim for false imprisonment, defendant argues that it confined plaintiff at all times pursuant to facially valid sentencing entries. In support of its motion, plaintiff submitted the affidavit of Charlene Gregory who is employed as a Correctional Records Sentence Computation Auditor. Defendant also submitted the indictment, sentencing entries, and decision of the court of appeals.

{¶7} Gregory avers that on August 19, 2009, plaintiff was sentenced in Summit County following a jury trial where he was convicted of aggravated robbery, theft, and a firearm specification. Plaintiff was sentenced to a definite term of four years for aggravated robbery to run concurrent to one year for theft. That sentence was to run consecutive to three years for a firearm specification. Plaintiff was admitted to defendant’s custody on August 27, 2009 and plaintiff was given eight days jail credit from the time of sentencing up to plaintiff’s entry into defendant’s custody.

{¶8} On December 23, 2009, the Summit County Court of Common Pleas granted plaintiff 146 additional days of jail time credit, bringing plaintiff's total jail credit to 153 days. Plaintiff's release date was set for March 24, 2016.

{¶9} Following an appeal to the Ninth District Court of Appeals, on December 15, 2010, plaintiff was resentenced to four years for aggravated robbery plus three years on the firearm specification. Plaintiff was not resentenced on the charge of theft. Gregory avers that plaintiff's release date was recalculated and his sentence began to run on January 6, 2011. Plaintiff was given jail time credit for 650 days. Plaintiff's release date was set as March 24, 2016.

{¶10} Gregory avers that there was nothing about the August 19, 2009 or the December 15, 2010 entries that caused defendant to believe they were not accurate. Gregory concludes that at all times plaintiff was incarcerated in accordance with a valid judgment of the sentencing court.

{¶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. "[T]he elements of an inmate's claim 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." *Jones v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 16AP-138, 2016-Ohio-5425, ¶ 8; see *Griffin v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 10AP-733, 2011-Ohio-2115, ¶ 19, quoting *Corder v. Ohio Dept. of Rehab. & Corr.*, 94 Ohio App. 3d 315, 318, 640 N.E.2d 879 (10th Dist.1994).

{¶12} "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. * * * Therefore, to succeed on a false imprisonment claim based on imprisonment pursuant to a court's entry or order, the court's entry must be invalid on its face. Facial invalidity does not require the consideration of extrinsic information or the application of case law." *Pruitt v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 13AP-117, 2013-Ohio-3743, ¶ 7 (citations omitted).

{¶13} As stated previously, plaintiff did not respond to defendant's motion for summary judgment and failed to offer any evidence to contradict that put forth by defendant. Civ.R. 56(E) provides: "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party."

{¶14} Nowhere in plaintiff's complaint does he allege that the sentencing entry was facially invalid. Rather, it appears plaintiff believes that the trial court failed to timely hold a sentencing hearing following the decision by the Ninth District Court of Appeals. As a result, plaintiff concludes that the trial court lacked jurisdiction to impose a sentence of imprisonment. As stated previously, the court lacks jurisdiction to review any alleged errors in sentencing. *Foreman* at ¶ 16. Additionally, defendant is immune from a common law claim of false imprisonment even when a plaintiff was incarcerated pursuant to a facially-valid judgment or order that is later determined to be void. *Beachum v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 11AP-635, 2012-Ohio-673, ¶ 6.

{¶15} Plaintiff's theory of relief would require defendant to consider the application of case law to determine whether the sentencing court had jurisdiction to impose a term of imprisonment. However, as stated previously, it is well-settled that

facial invalidity does not require the consideration of extrinsic information or the application of case law. *McKinney v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-960, 2010-Ohio-2323, ¶ 12.

{¶16} Furthermore, plaintiff has not presented the court with any evidence to contradict that put forth by defendant. Therefore, the court must conclude that at all times relevant to this case, defendant confined plaintiff pursuant to a facially valid sentencing entry. Based upon the foregoing, it can only be concluded that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law on plaintiff's claim. Accordingly, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. All previously scheduled events are hereby 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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