

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Jermaine Hickman,

Plaintiff,

v.

United States of America,

Defendant.

ORDER

Civil No. 14-3041 ADM/JSM

Richard Student, Esq. and Kevin Gregorius, Esq., Meshbesher & Associates, PA, Minneapolis, MN, on behalf of Plaintiff.

Pamela Marentette, Esq., Assistant United States Attorney, United States Attorney's Office, Minneapolis, MN, on behalf of Defendant.

On May 21, 2015, the undersigned United States District Judge heard oral argument on Defendant's Motion for Judgment on the Pleadings [Docket No. 21]. Defendant moves for dismissal of Count III of Plaintiff's Complaint, which seeks unpaid wages under the Fair Labor Standards Act ("FLSA") for work Plaintiff performed as an inmate during a period of alleged over-service of a federal sentence. For the reasons stated at the hearing, the Court concludes that Plaintiff was not an "employee" within the meaning of the FLSA during his period of over-service. See *McMaster v. State of Minn.*, 30 F.3d 976, 980 (8th Cir. 1994) (holding that inmates "who are required to work as part of their sentences and perform labor within a correctional facility as part of a state-run prison industries program are not 'employees' of the state or prison within the meaning of the Fair Labor Standards Act"). Since a waiver of sovereign immunity has not occurred, Plaintiff cannot sustain a claim for unpaid wages under the FLSA.

Based upon the foregoing, all the files, records, and proceedings herein, and for the reasons stated on the record at the conclusion of oral argument, **IT IS HEREBY ORDERED** that

Defendant's Motion for Judgment on the Pleadings [Docket No. 21] is **GRANTED** and Count III of Plaintiff's Complaint is **DISMISSED**.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: May 21, 2015.