

[Cite as *McAllister v. Ohio Dept. of Reab. & Corr.*, 2004-Ohio-3823.]

IN THE COURT OF CLAIMS OF OHIO

JOHN MCALLISTER	:	
Plaintiff	:	CASE NO. 2003-04449
v.	:	<u>DECISION</u>
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	:	
Defendant	:	
	:	: :

{¶1} By agreement of counsel, and with the consent of the court, this case has been submitted for a decision on the merits based upon stipulated facts and trial briefs.

{¶2} The material facts are set forth in the stipulations filed by the parties, as follows:

{¶3} "1. \*\*\*.

{¶4} "2. On January 29, 1998, McAllister agreed to plead guilty to the lesser and included offence of Burglary, a felony of the third degree, and one count of Falsification, a misdemeanor of the first degree. The remaining count of Falsification was dismissed. McAllister was then sentenced to three years in prison for Burglary and 180 days for Falsification, to run concurrently, with credit for all time served. Copies of the transcript of the proceedings and the sentencing Journal Entry are attached hereto as Exhibits B and C respectively.

{¶5} "3. McAllister was delivered into Defendant's custody on February 6, 1998, to serve his sentence and was assigned inmate number 355475. He was timely released from prison at the expiration of the term on November 25, 2000.

{¶6} "4. On October 27, 1999, McAllister, while still incarcerated, was screened for Post Release Control pursuant to R.C. 2967.28. The Parole Board determined that post release control was mandatory under the circumstances and issued a notification that McAllister would be subject to three years of post release control upon the expiration of his three-year term. Copies of the Assessment and Notification are attached hereto as Exhibits D and E respectively.

{¶7} "5. \*\*\*.

{¶8} "6. Effective May 9, 2001, McAllister was declared to be a Violator-at-Large (copy of order attached hereto as Exhibit G) and was arrested May 25, 2001 on an APA warrant.

{¶9} "7. A release violation hearing was held on July 9, 2001 and McAllister was found guilty of violating the terms of his post release control and was sanctioned with a 120-day prison term, effective July 10, 2001. Copies of the Sanction Order and Notice of Findings are attached hereto as Exhibits H and I respectively.

{¶10} "8. McAllister was returned to prison on July 12, 2001 and his sanction was calculated to expire on November 6, 2001.

{¶11} "9. On August 6, 2001, McAllister filed a Motion Requesting Release of Defendant for Lack of Jurisdiction (attached hereto as Exhibit J) in his criminal case in the Summit County Court of Common Pleas. On August 13, 2001, the court denied the motion. A copy of the journal entry is attached hereto as Exhibit K.

{¶12} "10. On August 22, 2001, McAllister filed a Petition for Habeas Corpus (attached hereto as Exhibit L) in the Ninth District Court of Appeals.

{¶13} "\*\*\*.

{¶14} "13. On October 9, 2001, the Ninth District Court of Appeals \*\*\* transferred the case to the Richland County Court of Appeals. A copy of the journal entry is attached hereto as Exhibit O.

{¶15} "14. On October 22, 2001, prior to Defendant having an opportunity to respond to McAllister's petition for habeas corpus, the Richland County Court of Appeals granted the writ and ordered McAllister's release. A copy of the Judgment Entry is attached hereto as Exhibit P.

{¶16} "15. McAllister was released that same date, October 22, 2001, pursuant to the court order."

{¶17} In the present case, plaintiff is claiming false imprisonment during the post-release control prison term because he was not informed at his original sentencing that he would be subject to post-release control. Defendant argues that the claim is barred by the applicable statute of limitations.

{¶18} R.C. 2743.16(A) provides in relevant part:

{¶19} "\*\*\* 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 the accrual of the cause of action *or within any shorter period that is applicable to similar suits between private parties.*"

(Emphasis added.) Thus, the applicable statute of limitations for a cause of action which alleges false imprisonment is R.C. 2305.11(A), and it requires an action for false imprisonment to be commenced within one year after its

accrual. *Mickey v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 02AP-539, 2003-Ohio-90; *Haddad v. Dept. of Rehab. & Corr.*, Franklin App. No. 01AP-1130, 2002-Ohio-2813.

{¶20} It is undisputed that plaintiff was released by defendant on November 25, 2000, re-incarcerated for a post-release control violation, and then released a second time on October 22, 2001, pursuant to a court order. Plaintiff's complaint was not filed until April 3, 2003.

{¶21} As a general rule, a claim for false imprisonment accrues upon plaintiff's release from confinement. *Haddad*, supra. Consequently, even if the court were to find that plaintiff's claim for false imprisonment accrued upon his final release on October 22, 2001, his complaint was not filed within one year thereafter.

{¶22} For the foregoing reasons, the court finds that plaintiff's claim of false imprisonment is barred by the one-year statute of limitations and accordingly, judgment shall be rendered in favor of defendant.

IN THE COURT OF CLAIMS OF OHIO

JOHN MCALLISTER :  
Plaintiff : CASE NO. 2003-04449  
v. : JUDGMENT ENTRY  
OHIO DEPARTMENT OF :  
REHABILITATION AND CORRECTION :  
Defendant :  
: : : : : : : : : : : : : : : :

This case was submitted to the court for decision based upon trial briefs and stipulations of fact. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, 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.

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Judge

Entry cc:

Terrence J. Baxter  
239 N. Fourth Street  
Coshocton, Ohio 43812

Attorney for Plaintiff

Sally Ann Walters  
Assistant Attorney General  
150 East Gay Street, 23rd Floor  
Columbus, Ohio 43215-3130

Attorney for Defendant

LM/cmd  
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