

[Cite as *Clark v. Ohio State Penitentiary*, 2003-Ohio-2978.]

IN THE COURT OF CLAIMS OF OHIO

DAVID CLARK :
Plaintiff :
v. : CASE NO. 2003-01466-AD
OHIO STATE PENITENTIARY : MEMORANDUM DECISION
Defendant :

: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶1} 1) At some time during 1998, plaintiff, David Clark, an inmate incarcerated at the Southern Ohio Correctional Facility (SOCF), was ordered to undergo monthly drug testing based on three separate offenses involving possession of an intoxicating liquid. Plaintiff was assessed fines totaling \$150.00 for these three offenses.

{¶2} 2) Three charges were made against plaintiff's inmate account on August 7, 1998, September 23, 1998, and October 14, 1998. These charges totaled \$159.00 and were presumably for drug testing costs. Plaintiff refused to be tested on September 2, 1998, and September 29, 1998. He submitted to testing on October 16, 1998, and November 20, 1998. All testing and charges associated with testing were completed at SOCF. On November 27, 1998, plaintiff was transferred from SOCF to the Ohio State Penitentiary.

{¶3} 3) Plaintiff stated he was ordered to undergo drug testing for a period of thirty months. Plaintiff asserted he was

charged \$5.00 per month for these tests. Plaintiff contended the tests were never performed. Plaintiff filed this complaint seeking to recover \$150.00, the amount allegedly withdrawn from his inmate account for drug tests which were allegedly not performed. Withdrawals from plaintiff's inmate account for drug testing costs were made up to April 1, 2002. Plaintiff related the drug testing costs were for tests to be performed from October 1998, to April 2001. Funds for these tests were withdrawn from plaintiff's inmate account from December 1999, to April 2002. Plaintiff filed his complaint on January 15, 2003. Evidence has shown plaintiff had ½ of his earnings withdrawn from his account from the time he was convicted of offenses by the SOCF Rules Infraction Board (RIB) during the summer of 1998.

{¶4} 4) On March 20, 2003, defendant submitted an investigation report asserting plaintiff's case should be dismissed based on his failure to timely file his complaint.

{¶5} 5) On April 28, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff admits he became aware of a problem with removal of money from his account on August 18, 2000, more than two years prior to the filing of this complaint.

CONCLUSIONS OF LAW

{¶6} "1) R.C. 2743.16(A) states:

"(A) Subject to division (B) of this section, 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."

Taking plaintiff's evidence in the best light, his cause of action occurred from October 1998, to April 2001. Although, according to plaintiff, drug tests were mandated, but not performed, he was assessed costs for these non performed tests. Plaintiff's cause of action accrual dates are based not on the time frame when funds ceased being withdrawn upon completion of payment, but on the time assessment became due. Therefore, plaintiff's cause of action occurred on a monthly basis from October 1998 to April 2001. Consequently, any claim for improper assessments from October 1998 through December 2000 is barred by R.C. 2743.16(A), the statute of limitations for filing in this court.

{¶7} 2) However, any claim not subject to the appropriate statute of limitations is also denied. Plaintiff's claim arises out of conduct reports and dispositions of the Rules of Infraction Board (RIB). It is well settled that the court does not have jurisdiction to review decision made by the RIB, *Burton v. Lorain Corr. Inst.* (1996), 95-09612-AD. Accordingly, plaintiff's case should be dismissed on this basis.

{¶8} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶9} IT IS ORDERED THAT:

{¶10} 1) Plaintiff's claim is DISMISSED with prejudice;

{¶11} 2) Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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