

IN THE COURT OF CLAIMS OF OHIO

HEUNG MYON KIM :
Plaintiff :
v. : CASE NO. 2003-11283-AD
MANSFIELD CORRECTIONAL : MEMORANDUM DECISION
INSTITUTION :
Defendant :
:.....

FINDINGS OF FACT

{¶1} 1) Plaintiff, Heung Myon Kim, an inmate incarcerated at defendant, Mansfield Correctional Institution (ManCI), stated he gave one hundred forty-nine cassette tapes to another inmate, identified as Harris on May 18, 2003. The cassette tapes were described as Korean Christian cassette tapes. Plaintiff related the cassette tapes were supposed to be forwarded by inmate Harris to the ManCI chaplain, Jon Maas.

{¶2} 2) On May 19, 2003, plaintiff was transferred from the ManCI general population to a segregation unit.

{¶3} 3) On May 28, 2003, ManCI personnel conducted a shakedown search. The one hundred forty-nine cassette tapes which had remained in the possession of inmate Harris, were confiscated. Plaintiff asserted the confiscated tapes were subsequently destroyed by ManCI staff.

{¶4} 4) Consequently, plaintiff filed this complaint seeking to recover \$298.00, the replacement cost of the confiscated cassette tapes, plus \$25.00 for filing fee reimbursement. Plaintiff paid

the requisite filing fee.

{¶5} 5) Defendant acknowledged cassette tapes were confiscated from inmate Harris. The confiscated tapes were classified as contraband and scheduled for destruction. Defendant contended plaintiff did not offer sufficient proof to establish he was the rightful owner of the confiscated tapes. Defendant argued that if plaintiff did offer proof he actually owned the tapes, he should still be precluded from recovery due to the fact he violated institutional rules by giving the tapes to inmate Harris. Defendant submitted a copy of an order issued by the Richland County Common Pleas Court authorizing ManCI representatives to destroy confiscated property, including the one hundred forty-nine cassette tapes claimed in the instant action.

{¶6} 6) On March 1, 2004, plaintiff filed a response to defendant's investigation report. Plaintiff explained the confiscated cassette tapes were not destroyed, but mailed from ManCI to the Cleveland Korean Presbyterian Church in Cleveland, Ohio. Plaintiff asserted the fact the tapes were mailed and not destroyed acts as an admission by defendant that he was the proper owner of the tapes. Plaintiff requested he be awarded the \$25.00 filing fee as damages.

CONCLUSIONS OF LAW

{¶7} 1) An inmate plaintiff may recover the value of confiscated property destroyed by agents of defendant when those agents acted without authority or right to carry out the property destruction. *Berg v. Belmont Correctional Institution* (1998), 97-09261-AD.

{¶8} 2) However, in the instant claim, defendant was granted court ordered authority to destroy plaintiff's confiscated property. An inmate plaintiff is barred from recovering the value

of confiscated property formally forfeited pursuant to a properly obtained court order. *Dodds v. Department of Rehabilitation and Correction* (2000), 2000-03603-AD. Plaintiff's claim for any forfeited property is dismissed.

{¶9} 3) Plaintiff has no right to pursue a claim for property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1985), 84-09071. A plaintiff does not maintain any ownership rights in forfeited property or right to pursue a claim for any loss associated with or actual loss of forfeited property. This court lacks jurisdiction to hear appeals of orders issued by state common pleas courts. *Pianowski v. Ohio State Penitentiary* (2001), 2001-05464-AD, jud.

{¶10} Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum 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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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For Defendant

DRB/RDK/laa
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