[Cite as *Randolph v. Ohio Adult Parole Auth.*, 2004-Ohio-6580.]

IN THE COURT OF CLAIMS OF OHIO

KEITH RANDOLPH :

Plaintiff : CASE NO. 2003-11933
Judge J. Warren Bettis

v. :

DECISION

OHIO ADULT PAROLE AUTHORITY :

Defendant :

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

{¶ 1} On September 10, 2004, defendant filed a motion for summary judgment. On October 8, 2004, plaintiff filed a memorandum in opposition and his own motion for summary judgment. On October 14, 2004, defendant filed a motion to strike plaintiff's motion for summary judgment on the grounds that it was filed beyond the court-imposed deadline for filing dispositive motions. On October 28, 2004, plaintiff filed a response. Upon review, defendant's motion to strike is well-taken and plaintiff's motion for summary judgment is hereby STRICKEN from the record. However, plaintiff's memoranda in support will be considered by the court in ruling upon defendant's motion for summary judgment. The case is now before the court for a non-oral hearing on defendant's motion for summary judgment. Civ.R. 56(C) and L.C.C.R. 4.

{¶ 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, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} It is not disputed that plaintiff was in the custody of defendant from January 10, 1991, until May 23, 2003, when he was released on parole. In his complaint, plaintiff alleges that he was falsely imprisoned by defendant. More specifically, plaintiff alleges that defendant incorrectly calculated his initial parole eligibility date; that his initial parole hearing was delayed by reason of this error; and that he was held by defendant for a period of 54 months beyond the date when he should have been released on parole.

{¶ 5} "Pursuant to R.C. 2743.02(A)(1), the state may be held liable for the false imprisonment of its prisoners." *Bennett v. Ohio Dept. of Rehab. & Corr., et al.* (1991), 60 Ohio St.3d 107, at paragraph two of the syllabus. "In the absence of an intervening justification, a person may be found liable for the tort of false imprisonment if he or she intentionally continues to confine another despite knowledge that the privilege initially justifying that confinement no longer exists." Id. at paragraph one of the syllabus. However, "'an action for false imprisonment cannot be maintained where the wrong complained of is imprisonment in accordance with the judgment or order of a court, unless it appears that such judgment or order is void.'" Id. *quoting Diehl v. Friester* (1882), 37 Ohio St. 473, 475.

{¶ 6} In support of his position, plaintiff submits his own affidavit which provides in relevant part:

{¶ 7} "***

{¶ 8} "4. The Affiant further states that I was convicted of voluntary manslaughter and sentenced to five (5) to twenty-five (25) years plus three years of actual incarceration on the firearms specification by the court on January 7, 1991.

{¶ 9} "***

{¶ 10} "6. The Affiant further states that on November 13, 1998, I appeared before the Adult Parole Authority (APA) for a hearing. During the hearing, the APA placed me in category eleven

(11), the category for the offense of murder in order to determine the range of months that I would serve before being considered for release.

{¶ 11} "7. The Affiant further states that at the aforementioned hearing they gave me a score of one (1) on the risk of recidivism scale. This placed me in a guideline range of 180-240 months to be served before consideration of release. (Exhibit B)

{¶ 12} "8. The Affiant further states that if I would have been placed in category nine (9), the category for voluntary manslaughter, I would have fallen within the guideline range of 84-120 months to be served before consideration of release.

{¶ 13} "9. The Affiant further states that on January 12, 1999, I filed a complaint against the APA and Gary Nasal, the Miami County Prosecutor, alleging that the APA had breached the plea agreement or ['Contract'] that I had entered into with the State and requested declaratory judgment to force the APA to place me in category nine (9).

{¶ 14} "10. The Affiant further states that on March 31, 1999, the Miami County Court of Common Pleas dismissed my petition for Declaratory Judgment and Injunctive Relief in case No. 99-CVC-14; and I appealed the Trial Court decision to the Second District Court of Appeals.

{¶ 15} "***."

{¶ 16} Ohio Adm.Code 5120:1-1-10 entitled "initial and continued parole board hearing dates; projected release dates" provides, in relevant part:

{¶ 17} "(A) The initial hearing for each prisoner serving an indeterminate sentence shall be held on or about the date when the prisoner first becomes eligible for parole pursuant to rule 5120:1-1-03 of the Administrative Code. ***"

{¶ 18} Ohio Adm.Code 5120:1-1-03 entitled "minimum eligibility for release on parole" provides, in relevant part:

{¶ 19} "(A) Except as provided in rule 5120:1-1-06 of the Administrative Code for parole of dying prisoners and section 2967.18 of the Revised Code for emergency paroles, no inmate serving an indefinite sentence shall be released on parole *until he has served the minimum term* ***." (Emphasis added.)

{¶ 20} The facts of this case and the procedural history of plaintiff's declaratory judgment action in Case No. 99-CV-14 are detailed in two opinions issued by the Second District Court of Appeals. See *Randolph v. Ohio Adult Parol Authority* (Jan. 21, 2000), Miami County App. No. 99 CA 17; *Randolph v. Ohio Adult Parole Authority* (Feb. 8, 2002), Miami County App. No. 01-CA-36, 2002-Ohio-547.

{¶ 21} As a result of the above-referenced litigation, defendant was ordered to change plaintiff's offender category from 11 to 9, for purposes of determining plaintiff's parole eligibility. The effect of that declaration is that, under Ohio Adm.Code 5120:1-1-03, 5120:1-1-10, and defendant's own guidelines, plaintiff could become eligible for parole as early as 84 months after he began serving his sentence, and not 180 months as defendant had first determined. The order, however, did not become final until December 26, 2002, when the Supreme Court of Ohio affirmed the judgment of the Second District Court of Appeals. See *In re: Parole Determination Involving Indeterminate Sentencing Cases*, 98 Ohio St.3d 164, 2002-Ohio-7085. By that time, plaintiff had served almost 12 full years.

{¶ 22} In this case, plaintiff seeks compensation for false imprisonment for the period of 54 months from the date when he first could have become eligible for parole, November 13, 1998, to May 23, 2003, the date of his release on parole.

{¶ 23} Defendant argues that plaintiff cannot maintain a claim for false imprisonment under these facts because the decision to grant parole is discretionary. There is support for this general proposition in the case law. Indeed, "'[t]here is no constitutional or inherent right *** to be conditionally released before the expiration of a valid sentence.'" *State ex rel. Hattie v. Goldhardt*, 69 Ohio St.3d 123, 125, 1994-Ohio-81, quoting *Greenholtz v. Inmates of Nebraska Penal & Correctional Complex* (1979), 442 U.S. 1, 7; see, also, *State ex rel. Lanham v. Ohio Adult Parole Authority* (1997), 80 Ohio St.3d 425, 1997-Ohio-104.

{¶ 24} Similarly, there is no constitutional or statutory right to an earlier consideration of parole. *State ex rel. Henderson v. Ohio Dept. of Rehab. & Corr.*, 81 Ohio St.3d 267, 268, 1998-Ohio-631. The APA has wide-ranging discretion in parole matters. *Layne v. Ohio Adult Parole Authority*, 97 Ohio St.3d 456, 2002-Ohio-6719. It may grant him parole when "'in its judgment there is reasonable ground to believe that *** paroling the prisoner would further the interests of justice and be consistent with the welfare and security of society." Id. at 464. In the exercise of that discretion, the parole authority may consider its guidelines, any circumstances relating to the offense or offenses committed, other crimes that did not result in conviction, the mental and moral qualities and characteristics of an inmate, and any other relevant factors. *Hemphill v. Ohio Adult Parole Authority* (1991), 61 Ohio St.3d 385. The APA's internal guidelines do not change the discretionary nature of its parole determination. *State ex rel. Vaughn v. Ohio Adult Parole Auth.*, 85 Ohio St.3d 378, 379, 1999-Ohio-394.

{¶ 25} In *Bennett*, supra, plaintiff had been sentenced on May 16, 1985, to six months incarceration for an unspecified offense less 152 days for jail-time credit. Because plaintiff was on parole from another offense at the time of sentencing, defendants allegedly told plaintiff that a parole revocation hearing would be held "as soon as he became available." Plaintiff's sentence expired on June 10, 1985, without any parole revocation order having been entered. The state did not release plaintiff until December 17, 1985, despite the expiration of his sentence and the filing of several habeas corpus and mandamus actions. In holding that plaintiff's complaint stated a claim upon which relief could be granted under the theory of false imprisonment, the Supreme Court of Ohio stated: "Just as liability for negligence per se *** could be based on the state's failure to comply with a statute governing the confinement of furloughed prisoners, false imprisonment liability may be based on the state's failure to comply with statutes mandating the release of prisoners." *Bennett*, at 110.

{¶ 26} Plaintiff's declaratory judgment action in this case involved a dispute over defendant's interpretation of its own parole eligibility guidelines in light of recently enacted sentencing laws. In affirming the judgment of the Second District Court of Appeals, the Supreme Court of Ohio declared only that plaintiff should have been placed in a different offender category in

determining parole eligibility. The court did not hold that defendant had violated any laws mandating plaintiff's release.

{¶ 27} In *Fryerson v. Ohio Dept. of Rehab. & Corr.*, 120 Ohio Misc.2d 50, 2002-Ohio-5757 the issue before this court was whether the Ohio Department of Rehabilitation and Correction (ODRC) could be held liable to plaintiff for false imprisonment where plaintiff's confinement followed a conviction on charges not properly bound over to the sentencing court. In finding for ODRC, this court stated: "[w]here the court of common pleas had some jurisdiction over plaintiff at the time of the order of bindover, the court's entry of sentence did not give rise to an action against defendant for false imprisonment, where the charges relating to the offense against Jones, although erroneous, appeared valid on the face of the order of commitment. Id. at ¶16.

{¶ 28} The Court of Appeals affirmed the above-referenced decision. See *Fryerson v. Ohio Dept. of Rehab. & Corr.* (May 29, 2003), Franklin App. No. 02AP-1216, 2003-Ohio-2730. In so doing, the court distinguished *Bennett*, supra, as follows: "We find *Bennett* inapplicable to the present case. *** In *Bennett*, the ODRC had no 'colorable' basis for Bennett's confinement after the expiration of his sentence, but continued to imprison him. In the present case, appellant does not contend that the ODRC continued to confine him after gaining knowledge that it no longer had any right to confine him. The ODRC immediately released appellant after our decision in Fryerson I and the juvenile court's subsequent release order. As is apparent from paragraph one of the syllabus, *Bennett* stands only for the proposition that false imprisonment is actionable if the ODRC intentionally confined the inmate beyond the expiration of his sentence. See, e.g., *Mickey v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 02AP-539, 2003-Ohio-90. The ODRC in the present case did not intentionally confine appellant with knowledge that it was doing so pursuant to a judgment that was 'void ab initio,' and it released him immediately after the court's order to do so." Id. at ¶15.

{¶ 29} Based upon the undisputed evidence in this case, the court finds that defendant reconsidered plaintiff's parole eligibility once the Supreme Court of Ohio had decided the appeal in his favor and the defendant subsequently had released plaintiff on parole.

{¶ 30} Here, unlike *Bennett*, supra, plaintiff was ultimately released prior to the expiration of his lawful sentence. Additionally, as was the case in *Fryerson*, supra, the evidence conclusively establishes that defendant redetermined plaintiff's parole eligibility shortly after the Supreme Court of Ohio issued its declaration, provided plaintiff with a parole hearing and, thereafter, released him on parole without delay.

{¶ 31} Upon review of the *Bennett* case, the *Fryerson* case and the other relevant case law, and construing the evidence in plaintiff's favor, the court finds that no genuine issues of material fact exist and that defendant is entitled to judgment as a matter of law. Accordingly, defendant's motion for summary judgment shall be GRANTED.

IN THE COURT OF CLAIMS OF OHIO

KEITH RANDOLPH :

Plaintiff : CASE NO. 2003-11933
Judge J. Warren Bettis

v. :

JUDGMENT ENTRY

OHIO ADULT PAROLE AUTHORITY :

Defendant :

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A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and 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.

JOSEPH T. CLARK
Judge

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LP/cmd
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