

had her community control probation revoked by a judgment issued on September 21, 2001 from the Court of Common Pleas of Hamilton County. Pursuant to the judgment entry revoking community control, plaintiff was sentenced to a period of confinement of one year with 83 days credit to be applied against the one year sentence. Plaintiff remained incarcerated at a DRC facility until March 22, 2002, when she was released due to the expiration of the one-year sentence term imposed by the trial court with all credits applied. Subsequently, on April 3, 2002, plaintiff's community control revocation was reversed after plaintiff had been released from defendant's custody.

{¶3} Defendant essentially filed a motion for summary judgment in this matter arguing that plaintiff has failed to produce any set of facts entitling her to recovery under a false imprisonment theory. Defendant contended "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 such judgment or order is void." *Larkins v. Ohio Department of Rehabilitation & Correction* (Mar. 18, 1999), Franklin App. No. 98AP-711. Defendant asserted plaintiff was lawfully confined under a valid court sentencing order and consequently, plaintiff is precluded from maintaining a false imprisonment action against DRC.

{¶4} Plaintiff responded to defendant's summary judgment motion insisting she was falsely imprisoned due to the actions of the Court of Common Pleas of Hamilton County. Plaintiff did not present any evidence to establish DRC lacked justification for keeping her in confinement until March 22, 2002.

{¶5} To the extent that plaintiff alleges a claim for false imprisonment under the common

law, the tort of false imprisonment is defined as an intentional confinement of an individual in the absence of an intervening justification, despite knowledge that the privilege initially justifying that confinement no longer exists. *Bennett v. Ohio Dept. of Rehab. and Corr.* (1991), 60 Ohio St. 3d 107. 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 appear[s] that such judgment or order of the court, is void.” *Bennett*, id, at 111; *Tymcio v. State* (1977), 52 Ohio App. 2d 298, 303.

{¶6} As stated, the substance of plaintiff’s claim is that her probation revocation was overturned on appeal. Plaintiff does not allege DRC continued to confine her for any period of time after receiving notice that the judgment of revocation had been reversed. In fact, defendant released plaintiff at the expiration of her sentence before the appellate court ruled on her revocation appeal. Based upon the facts set forth in this claim, it is clear defendant initially incarcerated plaintiff pursuant to a lawful sentencing order and then released plaintiff when that sentence expired. Liability for false imprisonment does not attach under these circumstances. See *Carter v. Ohio Department of Rehabilitation and Correction* (Aug. 30, 2001), Court of Claims No. 2000-10839; *Earley v. State of Ohio* (Apr. 7, 2004), Court of Claims No. 2004-01664-WI.

{¶7} For the foregoing reasons, 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.

DANIEL R. BORCHERT
Deputy Clerk

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