[Cite as *Doyle v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-1802.]

IN THE COURT OF CLAIMS OF OHIO
www.cco.state.oh.us

TYRONE DOYLE :		
Plaintiff	:	CASE NO. 2005-06716 Judge Joseph T. Clark
v.	:	DECISION
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, et al.	:	
Defendants	:	

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

{¶ 1} On October 11, 2005, plaintiff filed a motion for summary judgment pursuant to Civ.R. 56. On October 19, 2005, defendants filed a memorandum in opposition and a cross-motion for summary judgment. On October 31, 2005, plaintiff filed a reply which the court subsequently construed as a memorandum contra to defendants' cross-motion for summary judgment.

{¶ 2} On January 20, 2006, the court issued a decision denying both parties' motions. On January 26, 2006, defendants filed a motion for reconsideration and included evidence that had not been presented with the October 19, 2005, motion. On February 2, 2006, the court issued an entry construing defendants' January 26, 2006, motion as a second motion for summary judgment and scheduling a non-oral hearing on the same for February 23, 2006. On February 7, 2006, plaintiff filed a motion for leave to file instanter and to renew his October 11, 2005, motion for summary judgment. Upon review, plaintiff's motion for leave and to renew is well-taken and is GRANTED.

{¶ 3} The matter is now before the court for non-oral hearing on both parties' motions for summary judgment.

{¶ 4} Civ.R. 56 states, in part, as follows:

{¶ 5} "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, *Gilbert v. Summit County, 104* Ohio St. 3d 660, 2004-Ohio-7108; citing, *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 6} Plaintiff brought this action against defendants alleging a claim of false imprisonment. Plaintiff contends that he was held at Marion Correctional Institution for approximately three months beyond the expiration of his prison term.

{¶ 7} The undisputed facts relevant to plaintiff's claim are as follows. On November 14, 2003, plaintiff pleaded guilty to a fifth degree felony charge of possession of drugs in each of two Cuyahoga County cases: Nos. 431594 and 430467. In January 2004, he was sentenced to concurrent terms of community control for those offenses. On August 25 and 27, 2004, plaintiff was found to be in

violation of the terms of community control; he was sentenced to a six-month term of imprisonment in each of his cases, to be served concurrently. In Case No. 431594, the sentencing judge specified in her entry that plaintiff was to receive 111 days of jail-time credit. In Case No. 430467, the judge's entry specified that jail-time credit was to be calculated by the Cuyahoga County sheriff.

{¶ 8} Plaintiff began serving his sentences on August 30, 2004. On February 17, 2005, defendants received an entry from the Cuyahoga County court which granted plaintiff 100 days of jail-time credit in Case No. 430467. Plaintiff was released that day. Plaintiff contends that, had defendants properly credited him with all the jail time that he was due, he should have been released on November 4, 2004. In support of his motion, plaintiff argues that, pursuant to R.C. 2967.191, defendants were explicitly required to reduce his sentence by the amount of jail time that he had already served and that in order to fulfill that obligation it was incumbent upon defendants to inquire of the sheriff's department as to how many days to deduct from the sentence in Case No. 430467. This court disagrees.

{¶ 9} In order to prevail on his claim of false imprisonment plaintiff must show that: 1) his lawful term of confinement expired; 2) defendants intentionally confined him after the expiration; and 3) defendants had knowledge that the privilege initially justifying the confinement no longer existed. *Corder v. Ohio Dept. of Rehab. and Corr.* (1994), 94 Ohio App.3d 315, 318, *Bennett v. Ohio Dept. of Rehab. and Corr.* (1991), 60 Ohio St.3d 107.

{¶ 10} In this case, plaintiff's sentence had expired before the date of his release; however, the evidence fails to establish

that defendants continued to confine plaintiff after they had knowledge that the privilege initially justifying his confinement no longer existed. Although plaintiff correctly points out that defendants were required to credit plaintiff with all the jail time that he was due,[1] the statute does not impose a duty upon them to investigate the matter with the sheriff's department. Indeed, in *State ex rel. Corder v. Wilson* (1991), 68 Ohio App.3d 567, 572, the court stated that "[t]he law has been and is still clear that, although the Adult Parole Authority is the body who credits the time served, it is the sentencing court who makes the determination as to the amount of time served by the prisoner before being sentenced to imprisonment in a facility under the supervision of the Adult Parole Authority." Moreover, pursuant to Ohio Adm.Code 5120-2-04(H), in reference to jail-time credit, "if the determination of the sentencing court appears to be erroneous or if a prisoner brings information to the attention of the Adult Parole Authority that causes the Adult Parole Authority to question the accuracy of the determination, the Adult Parole Authority shall address its concerns to the sentencing court." OAG No. 93-035.

{¶ 11} In this case, there was nothing to question in the judge's sentencing entry; it simply provided that the sheriff's department would calculate jail-time credit. Thus, defendants had no discretion to release plaintiff until an amended sentencing entry or sheriff's letter had been received. *State ex rel. Corder*,

---

[1]R.C. 2967.191 provides in pertinent part that: "[t]he department of rehabilitation and correction *shall* reduce the stated prison term of a prisoner *** by the total number of days that the prisoner was confined for any reason arising out of the offense for which the prisoner was convicted and sentenced, including confinement in lieu of bail while awaiting trial, confinement for examination to determine the prisoner's competence to stand trial or sanity, and confinement while awaiting transportation to the place where the prisoner is to serve the prisoner's prison term." (Emphasis added.)

supra, at 574. Whether the sheriff's department violated plaintiff's civil rights is an issue that is not within this court's jurisdiction.

{¶ 12} Therefore, construing the evidence most strongly in plaintiff's favor, the court finds that no genuine issues of material fact exist and that defendants are entitled to judgment as a matter of law. Accordingly, defendants' cross-motion for summary judgment shall be granted and plaintiff's motion for summary judgment shall be denied.

IN THE COURT OF CLAIMS OF OHIO
www.cco.state.oh.us

TYRONE DOYLE :

Plaintiff : CASE NO. 2005-06716
Judge Joseph T. Clark

v. :

JUDGMENT ENTRY

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, et al. :

Defendants :

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

A non-oral hearing was conducted in this case upon plaintiff's and defendants' cross-motions for summary judgment. For the reasons set forth in the decision filed concurrently herewith, plaintiff's motion for summary judgment is DENIED and defendants' motion for summary judgment is GRANTED. Judgment is rendered in favor of defendants. 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

Entry cc:

Margaret Amer Robey — Attorney for Plaintiff
14402 Granger Road
Cleveland, Ohio 44137

Stephanie D. Pestello-Sharf — Attorney for Defendants
Assistant Attorney General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

LH/cmd
Filed March 15, 2006
To S.C. reporter April 6, 2006