

[Cite as *Hayes v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-7171.]

IN THE COURT OF CLAIMS OF OHIO

RICHARD HAYES :  
 :  
 Plaintiff : :

v. : :

CASE NO. 2005-08417-AD

OHIO DEPARTMENT OF :  
 REHABILITATION AND CORRECTION :  
 :  
 Defendant :

MEMORANDUM DECISION

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

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Richard Hayes, an inmate formerly incarcerated at defendant's Southern Ohio Correctional Facility ("SOCF"), stated he delivered documents for mailing to the SOCF mailroom on May 30, 2005. Plaintiff pointed out the delivered documents consisted of a civil complaint intended to be mailed to and filed at the U.S. District Court in Columbus. Plaintiff authorized the withdrawal of \$1.52 from his inmate account to cover mailing expenses for this self described civil complaint. Plaintiff related this civil complaint was never received at the U.S. District Court.

{¶ 2} 2) Additionally, plaintiff explained he attempted to mail the same civil complaint to the court through the SOCF mailroom on July 11, 2005. Plaintiff authorized a \$2.21 withdrawal of funds from his inmate account to cover postage expenses for this civil complaint. Plaintiff asserted this civil complaint was never received at the U.S. District Court in Columbus.

{¶ 3} 3) Plaintiff maintained SOCF mailroom staff, "are guilty of destroying the court's mail, impeding my access to the court to exercise my rights to file a lawsuit against these defendants for medical indifference, lying, and falsifying information."

{¶ 4} Furthermore, plaintiff characterized defendant's employees as, "conspirators to obstruct justice and violate the law by estopping information on (SOCF employee) from getting to the courts."

{¶ 5} 4) In a previously filed grievance, plaintiff noted SOCF mailroom staff, "are responsible for several letters en-route to Federal and State courts not making it." Plaintiff wrote, "all I have seen was staff lying and covering up in an attempt to estop information from reaching the courts" and plaintiff accused SOCF personnel of "attempting to cover up their wrong and obstructing and impeding my access to the court."

{¶ 6} 5) In another submitted document, plaintiff addressed the nature of this action, stating, "litigation was filed against defendants accusing them of tampering with or deferring the mail en-route to the U.S. District Court in Cols, Ohio, 43215 and violating my Civil Rights by impeding my access to the courts."

{¶ 7} 6) Plaintiff filed this complaint seeking to recover \$2,500.00.

{¶ 8} 7) Defendant contended this court does not have jurisdiction to hear plaintiff's complaint regarding allegations about denial of access to the courts. Alternatively, defendant

denied any SOCF mailroom personnel mishandled plaintiff's legal mail. Defendant insisted all mail was delivered to the Lucasville Post Office.

{¶ 9} 8) Although plaintiff contended this court has jurisdiction over his claim involving denial of access to the courts, he did not cite any authority confirming his contention.

#### CONCLUSIONS OF LAW

{¶ 10} Access to the courts is a constitutional right guaranteed to all prisoners. *Bounds v. Smith* (1976), 430 U.S. 817, 821, 52 L Ed 2d 72, 97 S. Ct. 1491. This court is without jurisdiction to consider claims for relief premised upon alleged violations of the United States Constitution. See, e.g., *Graham v. Ohio Bd. of Bar Examiners* (1994), 98 Ohio App. 3d 620, 649 N.E. 2d 282; *White v. Chillicothe Correctional Institution* (Dec. 29, 1992), Franklin App. No. 92AP-1230, unreported; *White v. Dept. of Rehab. & Corr.* (Dec. 22, 1992), Franklin App. No. 92AP-1229, 1992 Ohio App. LEXIS 6749. Plaintiff is barred from bringing claims based upon denial of access to the courts which constitute actions against the state under Section 1983, Title 42, U.S. Code. These actions may not be brought in the Court of Claims because the state is not a "person" within the meaning of Section 1983. See, e.g., *Jett v. Dallas Indep. School Dist.* (1989), 491 U.S. 701, 109 S. Ct. 2702, 105 L. Ed. 2d 598; *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App. 3d 170, 528 N.E. 2d 607; *White v. Chillicothe Correctional Institution*, supra. Indeed, claims of denial of court access are to be treated as actions for alleged violations of constitutional rights under Section 1983, Title 42, U.S. Code.

Thus, this court is without jurisdiction to hear those claims.

{¶ 11} Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD. Plaintiff has failed to prove SOCF personnel did not post his legal mail and consequently any claim for reimbursement for postage expense is denied. Defendant is not responsible for an item once it is shipped out of the facility. At that point, the item is the responsibility of the mail carrier. *Owens v. Department of Rehabilitation and Correction* (1986), 85-08061-AD; *Gilbert v. C.R.C.* (1990), 89-12968-AD.

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Plaintiff :

v. :

CASE NO. 2005-08417-AD

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION :

ENTRY OF ADMINISTRATIVE  
DETERMINATION

Defendant :

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

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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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Plaintiff, Pro se

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RDK/laa

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