

[Cite as *Hamilton v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-4734.]

IN THE COURT OF CLAIMS OF OHIO

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| SIDNEY S. HAMILTON | : | |
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| Plaintiff | : | CASE NO. 2005-11221 |
| | : | Judge J. Craig Wright |
| v. | : | |
| | : | <u>ENTRY GRANTING DEFENDANTS'</u> |
| OHIO DEPARTMENT OF | : | <u>MOTION FOR SUMMARY JUDGMENT</u> |
| REHABILITATION AND CORRECTION, | : | |
| et al. | : | |
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| Defendants | : | |
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{¶ 1} On March 28, 2006, defendants filed a motion for summary judgment. On April 3, 2006, plaintiff filed a memorandum contra. The case is now before the court for a non-oral hearing on the 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, *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing, *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} In 1993, plaintiff was remanded to the custody and control of defendant, Ohio Department of Rehabilitation and Correction, following convictions for gross sexual imposition and attempted rape. As a condition of his release from prison in 2004, plaintiff entered into a parole agreement with defendant, Ohio Adult Parole Authority (APA). The parole agreement gave the APA the responsibility to supervise plaintiff and also required that plaintiff participate in sex-offender treatment. Plaintiff was subsequently jailed from December 30, 2005, to January 12, 2006, for refusing to take a polygraph test required by his sex-offender treatment program. In his nine-count amended complaint, plaintiff alleges several causes of action sounding in tort.

{¶ 5} To the extent that plaintiff's claims for malicious prosecution, abuse of process, false imprisonment, and negligence arise out of the original criminal proceedings, the existence of a valid final judgment of conviction precludes plaintiff from pursuing those claims in this court. See *Bennett v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St.3d 107; *Corder v. Ohio Dept. Of Rehab. & Corr.* (1994), 94 Ohio App.3d 315. Plaintiff alleges that both the terms of his parole and the APA's decision to jail him from December 30, 2005, to January 12, 2006, were unlawful and oppressive; however, he states no claim for relief.

{¶ 6} First, this court does not have jurisdiction to consider plaintiff's claims that the terms of his parole violate civil rights guaranteed by the United States and Ohio Constitutions. *Likes v. Ohio Dep't of Rehab. & Corr.*, Franklin App. No. 05AP-709, 2006-Ohio-231; *Bleicher v. University of Cincinnati College of Medicine* (1992), 78 Ohio App.3d 302; *Deavors v. Ohio Dept. of Rehab. & Corr.* (May 20, 1999), Franklin App. No. 98AP-1105. Second, it has been consistently held that the APA's decision to revoke parole is an exercise of an executive function involving a high degree of official judgment or discretion pursuant to legislative authority and, as such, is not actionable under the discretionary immunity doctrine. *Johnson v. Adult Parole Auth.* (Feb. 15, 2000), Franklin App. No. 99AP-522; see, also, *Reynolds v. State* (1984), 14 Ohio St.3d 68. Additionally,

APA employees have statutory authority to arrest and confine a parolee if the parole officer reasonably believes that a parolee has violated the terms of his or her parole agreement. See R.C. 2967.15(A).

{¶ 7} Finally, to the extent that plaintiff alleges that he was assaulted by two unidentified employees of defendants, the complaint contains insufficient operative facts or evidence to support such claim.

{¶ 8} Upon review, and construing the pleadings most strongly in plaintiff's favor, the court finds that the only reasonable conclusion to be drawn is that defendants are not liable to plaintiff as a matter of law. Therefore, defendants' motion for summary judgment is GRANTED and 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.

J. CRAIG WRIGHT
Judge

Entry cc:

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RCV/LP/cmd
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