

Court of Claims of Ohio

The Ohio Judicial Center
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Columbus, OH 43215
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JERMAINE JOHNSON

Case No. 2006-04610

Plaintiff

Judge J. Craig Wright
Magistrate Mathew C. Rambo

v.

MAGISTRATE DECISION

OHIO ATTORNEY GENERAL

Defendant

{¶ 1} On May 21, 2007, defendant filed a motion for summary judgment. On June 11, 2007, plaintiff filed a response. On June 26, 2007, an oral hearing was held at the North Central Correctional Institution on defendant's motion.

{¶ 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} Plaintiff filed this case alleging breach of contract. Plaintiff claims that a plea agreement that he entered into with the Lorain County prosecutor was not honored by the common pleas court and that, as a result, he remained in the custody and control of the

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Department of Rehabilitation and Correction after his negotiated term of imprisonment expired.

{¶ 5} Defendant argues that the Ohio Attorney General is not the proper defendant in this case.¹ Paragraph nine of plaintiff's complaint states that Laura Ann Swansinger, an assistant prosecuting attorney for Lorain County, acted as defendant's agent in this matter. Plaintiff's complaint further states that his plea agreement was signed by "plaintiff's defense attorney in this matter and the asst. prosecutor, and the judge and entered into the record." Based upon these statements in plaintiff's complaint, the court finds that the Ohio Attorney General is not a proper defendant in this case. Plaintiff has cited no statute, rule or case law that would impose civil liability upon the Ohio Attorney General for the alleged breach of the plea agreement executed by plaintiff and the county prosecutor. Accordingly, it is recommended that defendant's motion for summary judgment be granted and that judgment be rendered in favor of defendant.

A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law

¹Plaintiff filed his original complaint on July 14, 2006, naming the Ohio Attorney General as defendant. On September 6, 2006, plaintiff filed an amended complaint; however, the pleading was filed without the proper certificate of service, and is hereby STRICKEN from the record.

[Cite as *Johnson v. Ohio Atty. Gen.*, 2007-Ohio-4147.]

under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

MATTHEW C. RAMBO
Magistrate

cc:

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MR/cmd	

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To S.C. reporter August 15, 2007