

Court of Claims of Ohio

The Ohio Judicial Center
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Columbus, OH 43215
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DONTE CAMMON

Plaintiff

v.

SOUTHERN OHIO CORRECTIONAL
FACILITY

Defendant

Case No. 2006-07813

Judge Clark B. Weaver Sr.
Magistrate Matthew C. Rambo

MAGISTRATE DECISION

{¶1} On June 7, 2007, plaintiff filed a motion for summary judgment. On June 18, 2007, defendant filed a motion for summary judgment. On June 25, 2007, plaintiff filed a response. On July 31, 2007, an oral hearing was held on the motions. Plaintiff participated via telephone from the Southern Ohio Correctional Facility (SOCF).

{¶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} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff alleges that on July 26, 2006, the SOCF Rules Infraction Board (RIB) found him guilty of three rules infractions and placed

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him on 60 days of “recreation restriction.” Plaintiff’s restriction lasted from July 19, 2006, until October 10, 2006, a total of 84 days. Although plaintiff does not dispute the findings of the RIB, he claims that defendant was negligent in allowing the restriction to continue for 24 days in excess of the RIB order. Plaintiff further claims that the denial of recreation time violates his constitutional rights.

{¶5} Defendant argues that it is entitled to discretionary immunity from plaintiff’s negligence claims and that this court lacks jurisdiction over any constitutional claim asserted by plaintiff.

{¶6} The Supreme Court of Ohio has held that “[t]he language in R.C. 2743.02 that ‘the state’ shall ‘have its liability determined * * * in accordance with the same rules of law applicable to suits between private parties * * *’ means that the state cannot be sued for its legislative or judicial functions or the exercise of an executive or planning function involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion.” *Reynolds v. State* (1984), 14 Ohio St.3d 68, 70; *Von Hoene v. State* (1985), 20 Ohio App.3d 363, 364. Prison administrators are provided “wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.” *Bell v. Wolfish* (1979), 441 U.S. 520, 547.

{¶7} Defendant submitted the affidavit of Captain H. Bell to support its motion. Captain Bell stated that he was the chairperson of the SOCF RIB that heard plaintiff’s case. Captain Bell further stated that plaintiff is not permitted recreation on weekends because of his security classification as a “4B” inmate and that those days are not counted in determining the term of the recreation restriction. According to Captain Bell, the “excess” 24 days that plaintiff claims he spent on recreation restriction were Saturdays and Sundays.

{¶8} Based upon the unrefuted affidavit testimony of Captain Bell, the court finds that plaintiff has failed to prove that he spent time on recreation restriction beyond the term

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that was imposed by the RIB. Additionally, the court finds that plaintiff's claim concerns actions taken by defendant which are characterized by a high degree of discretion and judgment. Therefore defendant is entitled to discretionary immunity regarding that claim.

{¶9} Furthermore, the court construes plaintiff's claim regarding the denial of recreation time to be a complaint based upon the conditions of his confinement. Inmate complaints regarding the conditions of confinement are treated as claims arising under 42 U.S.C. 1983. *State ex rel. Carter v. Schotten*, 70 Ohio St.3d 89, 91, 1994-Ohio-37. It is well-settled that such claims are not actionable in the Court of Claims. See *Thompson v. Southern State Community College* (June 15, 1989), Franklin App. No. 89AP-114; *Burkey v. Southern Ohio Corr. Facility* (1988), 38 Ohio App.3d 170.

{¶10} Based upon the foregoing, it is recommended that plaintiff's motion for summary judgment be denied, 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 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

[Cite as *Cammon v. S. Ohio Correctional Facility*, 2007-Ohio-5149.]

cc:

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