

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

DEREK TRICE

Case No. 2007-04028

Plaintiff

Judge Clark B. Weaver Sr.

v.

DECISION

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

{¶1} On May 21, 2007, defendant filed a motion for summary judgment pursuant to Civ.R. 56. On June 21, 2007, plaintiff filed both a response to the motion and his own motion for summary judgment. On June 25, 2007, defendant filed a response. On June 28, 2007, the court conducted an oral hearing on both motions.

{¶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} On December 5, 2003, plaintiff pleaded no contest to possession of drugs, a felony of the fifth degree in violation of R.C. 2925.11. On January 9, 2004, plaintiff was sentenced to four years of community control sanctions under the supervision of the adult

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probation department. On November 18, 2005, plaintiff was found to be in violation of his community control sanctions and was sentenced to the Lorain Correctional Institution (LorCI) for a term of seven months pursuant to a November 22, 2005 sentencing entry. (Defendant's Exhibit D.)

{¶5} Plaintiff was admitted to the custody and control of defendant on November 29, 2005, and was conveyed to LorCI to begin serving his sentence. On January 10, 2006, plaintiff filed a motion for jail-time credit. On January 26, 2006, plaintiff was transferred to the Mansfield Correctional Institution (ManCI) where he served the remainder of his sentence.

{¶6} Plaintiff's scheduled release date was June 16, 2006. However, on April 3, 2006, plaintiff's motion for jail-time credit was granted. On April 11, 2006, the Bureau of Sentencing Computation received a copy of the April 3, 2006 judgment entry which ordered that plaintiff be granted 171 days of jail-time credit. Upon receipt of the entry, plaintiff's sentence was recalculated and he was released from custody on April 11, 2006.

{¶7} Plaintiff asserts a claim for false imprisonment. "False imprisonment occurs when a person confines another intentionally 'without lawful privilege and against his consent within a limited area for any appreciable time, however short.' *Feliciano v. Kreiger* (1977), 50 Ohio St.2d 69, 71, quoting 1 Harper & James, *The Law of Torts* (1956), 226, Section 3.7." *Bennett v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St.3d 107, 109.

{¶8} In order to prevail on his claim of false imprisonment plaintiff must show that: 1) his lawful term of confinement expired; 2) defendant intentionally confined him after the expiration; and 3) defendant had knowledge that the privilege initially justifying the confinement no longer existed. *Corder v. Ohio Dept. of Rehab. & Corr.* (1994), 94 Ohio App.3d 315, 318. However, "an action for false imprisonment cannot be maintained where the wrong complained of is imprisonment in accordance with the judgment or order of a court, unless it appear that such judgment or order is void." *Bennett*, supra, at 111, quoting *Diehl v. Friester* (1882), 37 Ohio St. 473, 475.

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{¶9} Defendant argues that no liability can be established for false imprisonment because at all times plaintiff was held in custody in accordance with a valid judgment entry of the sentencing court. Plaintiff asserts that defendant should be held liable for its failure to contact the sentencing court for clarification of the November 18, 2005 sentencing entry because the entry did not mention jail-time credit. Plaintiff further asserts that the omission of jail-time credit in the sentencing entry renders the sentencing entry void. Plaintiff cites R.C. 2949.08, 2949.12, and 2967.191 to support his position.

{¶10} The Tenth District Court of Appeals has outlined the duty of a trial court to calculate jail-time credit. “A defendant is entitled by law to have credited to the sentence of incarceration the number of days that he or she was confined prior to conviction and sentence. R.C. 2949.08;¹ 2949.12.² On July 1, 1998, Crim.R. 32.2 was amended, and the subdivision requiring the court to forward a statement of the number of days of confinement

¹R.C. 2949.08 states, in part:

“[W]hen a person who is convicted of or pleads guilty to a felony or a misdemeanor is sentenced to a term of imprisonment in a jail, the judge or magistrate shall order the person into the custody of the sheriff or constable, and the sheriff or constable shall deliver the person with the record of the person’s conviction to the jailer, administrator, or keeper, in whose custody the person shall remain until the term of imprisonment expires or the person is otherwise legally discharged. (B) The record of the person’s conviction shall specify the total number of days, *if any*, that the person was confined for any reason arising out of the offense for which the person was convicted and sentenced prior to delivery to the jailer, administrator, or keeper under this section.” (Emphasis added.)

²R.C. 2949.12 states, in part:

“Unless the execution of sentence is suspended, a convicted felon who is sentenced to serve a term of imprisonment in a state correctional institution shall be conveyed, within five days after sentencing, excluding Saturdays, Sundays, and legal holidays, by the sheriff of the county in which the conviction was had to the facility that is designated by the department of rehabilitation and correction for the reception of convicted felons. The sheriff shall deliver the convicted felon into the custody of the managing officer of the reception facility and, at that time, shall present the managing officer with a copy of the convicted felon’s sentence that clearly describes each offense for which the felon was sentenced to a correctional institution, designates each section of the Revised Code that the felon violated and that resulted in the felon’s conviction and sentence to a correctional institution, designates the sentence imposed for each offense for which the felon was sentenced to a correctional institution, *and, pursuant to section 2967.191 [2967.19.1] of the Revised Code, specifies the total number of days, if any, that the felon was confined for any reason prior to conviction and sentence.*” (Emphasis added.)

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to which a defendant is entitled by law to have credited to his or her minimum and maximum sentence was deleted. Thus, currently, the only requirement that trial courts follow to calculate the number of days for jail-time credit is set forth in Ohio Adm.Code 5120-2-04(B).³ * * * Although no statute or criminal rule requires trial courts to calculate the number of days of jail-time credit, R.C. 2967.191,⁴ 2949.08(C), and 2949.12 provide for the mandatory crediting of such time.” *State v. Thorpe* (June 30, 2000), Franklin App. Nos. 99AP-1180 through 1187.

{¶11} Under *Bennett*, supra, defendant does not have the authority to deviate from the sentencing order unless that order appears void on its face. Furthermore, pursuant to Ohio Adm.Code 5120-2-04 (E), “[i]f the court’s journal entry of sentence or stated prison term fails to specify that the offender is entitled to any credit up to the date of sentencing, the record office shall reduce the sentence or stated prison term only by the number of days the sheriff reports the offender was confined between the date of the sentencing entry and the date the offender was committed to the department.” Moreover, pursuant to Ohio Adm.Code 5120-2-04(H), “[a] party questioning either the number of days contained in the journal entry or the record of the sheriff shall be instructed to address his concerns to the court or sheriff. Unless the court issues an entry modifying the amount of jail-time credit or

³Ohio Administrative Code Section 5120-2-04 states, in part:

“(B) The sentencing court determines the amount of time the offender served before being sentenced. The court must make a factual determination of the number of days credit to which the offender is entitled by law and, if the offender is committed to a state correctional institution, forward a statement of the number of days of confinement which he is entitled by law to have credited. This information is required to be included within the journal entry imposing the sentence or stated prison term.”

⁴R.C. 2967.191 states, in relevant part:

“The 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.”

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the sheriff sends the institution corrected information about time confined awaiting transport, no change will be made.” Upon review of the above-mentioned code sections, the court finds that the omission of a finding of jail-time credit does not render plaintiff’s sentencing entry void, nor is it inconsistent with statutory requirements. The court further finds that it was reasonable for defendant to infer that the trial court granted no jail-time credit to plaintiff. Furthermore, the court does not perceive any error on the face of the entry which would draw into question the sentencing court’s jurisdiction over plaintiff’s criminal case.

{¶12} Although plaintiff's sentence had expired before the date of his release, defendant did not continue to confine plaintiff after it had knowledge that the privilege initially justifying his confinement no longer existed. Defendant was required to credit plaintiff with all the jail time that he was due, but no statute imposes a duty upon defendant to investigate the matter with the sentencing court. Indeed, the Tenth District Court of Appeals has 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.” *State ex rel. Corder v. Wilson* (1991), 68 Ohio App.3d 567, 572.

{¶13} In short, the only reasonable conclusion to be drawn from the evidence is that defendant did not falsely imprison plaintiff. Consequently, defendant is entitled to judgment as a matter of law. Therefore, defendant’s motion for summary judgment shall be granted, plaintiff’s motion for summary judgment shall be denied, and judgment shall be rendered in favor of defendant.

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Judge Clark B. Weaver Sr.

JUDGMENT ENTRY

An oral hearing was conducted in this case upon both parties' motions for summary judgment. For the reasons set forth in the decision filed concurrently herewith, plaintiff's motion for summary judgment is DENIED. Defendant's motion for summary judgment is GRANTED and 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.

CLARK B. WEAVER SR.
Judge

cc:

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HTS/cmd	

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