

# Court of Claims of Ohio

The Ohio Judicial Center  
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TIMOTHY JOHNSON

Plaintiff

v.

DEPARTMENT OF CORRECTIONS

Defendant

Case No. 2007-06209-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

{¶ 1} Plaintiff, Timothy Johnson, filed this action alleging he was falsely imprisoned by defendant, Department of Rehabilitation and Correction (“DRC”) for a period of forty-three days beyond the expiration date of his criminal sentence. Plaintiff requested damages in the amount of \$2,500.00 for work loss, loss of freedom, and emotional injuries. The damage claim amounts to the statutory maximum amount allowed under R.C. 2743.10. The filing fee was waived.

{¶ 2} On October 24, 2006, plaintiff appeared in the Common Pleas Court of Richland County where he entered a guilty plea for violating community control supervision, which had been imposed in lieu of an actual prison sentence based on a prior conviction for Attempted Burglary, a violation of R.C. 2911.12(A)(4), a fifth degree felony. Judge James DeWeese of the Common Pleas Court of Richland County signed a sentencing entry sentencing plaintiff to a prison term of six months to be served in the Ohio State Prison system. The sentencing entry, which was served on October 25, 2006, included a notation “\_\_\_\_\_ days of Jail Time Credit are granted

against the sentence as of this date.” On October 31, 2006, plaintiff was admitted to DRC custody to begin serving his imposed six-month prison term. Plaintiff was conveyed to DRC custody by a representative of the Richland County Sheriff who also delivered an Order For Jail Time Credit signed by Judge James DeWeese of the Richland County Court of Common Pleas. This Order For Jail Time Credit (copy submitted) granted plaintiff a total of thirty-four days credit reflecting time he had served in the Richland County Jail during the affixed dates: December 27, 2005, September 15, 2006 to September 25, 2006 and October 10, 2006 to October 31, 2006. Defendant, in applying the jail-time credit against plaintiff’s six-month prison sentence, calculated a total grant of thirty-three days explaining that plaintiff’s date of admission, October 31, 2006, is credited as a day of prison time. Plaintiff served a prison sentence from October 31, 2006 to March 27, 2007 when he was released from custody. Apparently, the thirty-three days jail-time credit plaintiff was granted was applied against a sentence of six months making the total time served in DRC custody a total of one hundred forty-eight days. Defendant related that no additional entries granting jail-time credit were received from the sentencing court after October 31, 2006. Therefore, plaintiff was released from incarceration at the expiration of his six-month sentence after applying all jail-time credit ordered by the sentencing court.

{¶ 3} Plaintiff asserted he was incarcerated by defendant for a period of forty-three days beyond the expiration of his prison term. Plaintiff explained defendant failed to credit him with forty-three days served at the Crosswaeh Community Based Correctional Facility (“CBCF”) during August and September 2006. Plaintiff related the Common Pleas Court of Richland County “ordered that the plaintiff was to receive credit for the CBCF time.” However, defendant did not credit plaintiff with any time spent at CBCF and consequently that fact constitutes the basis for this false imprisonment claim.

{¶ 4} Plaintiff filed a transcript excerpt recorded from his October 24, 2006 probation violation hearing in which he appeared before Judge James DeWeese in the Court of Common Pleas of Richland County. Plaintiff maintained Judge DeWeese, during the October 24, 2006 proceedings, granted him credit for his time spent at CBCF. Plaintiff referenced “page 3 line 6 to 12” of the submitted transcript, where Judge DeWeese addressed plaintiff about granting him CBCF time credit. Judge DeWeese stated “Apparently you (plaintiff) violated that (CBCF Last Change Contract).

Consequently, I have no choice but to send you to prison. I'm going to give you the minimum prison sentence. *I will give you credit for the time that you've served in jail and also in the CBCF program.* (Emphasis added.) You have a six month sentence with credit for time served.”

{¶ 5} Although Judge DeWeese told plaintiff he was to receive sentence credit for both CBCF time and jail-time, the October 31, 2006 Order For Jail Time Credit forwarded to defendant only granted credit for jail-time served and makes no reference to CBCF time. The October 25, 2006 Community Control Violation Journal Entry sentencing plaintiff to six months incarceration signed by Judge DeWeese includes a checked reference granting plaintiff jail-time credit. The checked reference includes: “( ) \_\_\_\_\_ days of Jail Time Credit are granted against this sentence as of this date.” The line provided for the number of days of jail-time credit is blank. No evidence has been submitted to prove DRC received any documentation from the Court of Common Pleas of Richland County granting plaintiff credit for any time spent at CBCF. Despite the recorded intentions of Judge DeWeese to grant plaintiff credit for his CBCF time, no documents expressing this intent were ever sent to DRC during the period of plaintiff's incarceration. No evidence has been submitted to show plaintiff filed any motion for additional jail-time credit during the period of his incarceration while under the custody of DRC.

{¶ 6} Defendant denied liability in this matter based on the contention that plaintiff failed to produce evidence to prove he was falsely imprisoned. Defendant stated plaintiff “was being confined pursuant to a lawful court order.” Defendant denied receiving any order from the sentencing court modifying or increasing plaintiff's jail-time credit beyond the credit granted on October 31, 2006, which reflected credit for time served in the Richland County Jail. Defendant denied receiving any order granting credit for time spent at CBCF. Defendant maintained plaintiff received all the jail-time credit the sentencing court ordered and, consequently, he was lawfully held in DRC custody from October 31, 2006 to March 27, 2007.

{¶ 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, 573 N.E. 2d 633.

{¶ 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, 640 N.E. 2d 879. 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 appears that such judgment or order is void." *Bennett*, at 111, quoting *Diehl v. Friester* (1882), 37 Ohio St. 473, 475.

{¶ 9} The evidence presented appears to establish plaintiff was held by DRC pursuant to a lawful court order. Despite the fact that evidence has been produced to indicate plaintiff could have been released earlier than March 27, 2007, if defendant had been notified about credit for CBCF time served, no evidence has been submitted to prove defendant received any order granting credit for CBCF time. In the instant claim, it was the duty of the sentencing court to properly calculate the days of jail-time credit and to communicate that number to the correctional institution so proper credit is received. Pursuant to R.C. 2949.12, the court entry sentencing the offender to prison that is delivered to the prison with the inmate shall include the number of jail-time credit days to which the inmate is entitled.<sup>1</sup> The order received from the Court of Common Pleas of Richland County when plaintiff was conveyed to DRC custody on October 31, 2006 granted plaintiff jail-time credit for time served in the Richland County Jail. No additional order addressing credit for time spent at CBCF was ever received by defendant. No wrongful imprisonment occurred due to the fact that the privilege justifying plaintiff's continued confinement existed until documentation of additional jail-time credit from the sentencing court was received. This documentation never arrived.

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<sup>1</sup> R.C. 2949.12 (Reception facilities for convicted felons) provides in pertinent part:

"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 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."

{¶ 10} The instant claim is centered on the failure to include additional credit for time served at CBCF. The Tenth District Court of Appeals has outlined the duty of a particular 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,<sup>2</sup> 2949.12. 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 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).<sup>3</sup> “\*\*\* Although no statute or criminal rule requires trial courts to calculate the number of days of jail time credit. R.C. 2967.191<sup>4</sup>, 2949.08(C), and 2949.12 provide for the mandatory crediting of such time.” *State v. Thorpe* (June 30, 2000), Franklin App. Nos. 99-AP-1180.

{¶ 11} Under *Bennett*, 60 Ohio St. 3d 107, 573 N.E. 2d 633, 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 bureau of sentence computation

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<sup>2</sup> R.C. 2949.08 states, in pertinent 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.)

<sup>3</sup> Ohio 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 of stated prison term.”

<sup>4</sup> R.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.”



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 issued an entry modifying the amount of jail-time credit or the sheriff sends the institution corrected information about the 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 CBCF jail-time credit does not render plaintiff’s sentencing entry void, nor is it inconsistent with statutory requirements. DRC had no duty to apply additional jail-time credit that the sentencing court did not specifically order.

{¶ 12} Although it appears 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, 589 N.E. 2d 113. Plaintiff has failed to produce evidence to establish any claim based on false imprisonment against defendant.

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ENTRY OF ADMINISTRATIVE DETERMINATION

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.

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DANIEL R. BORCHERT  
Deputy Clerk

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RDK/laa  
Filed 9/8/08  
Sent to S.C. reporter 11/19/08