

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

DARRYL DURR

Plaintiff

v.

OHIO DEPARTMENT OF CORRECTIONS

Defendant

Case No. 2008-07519-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} Plaintiff, Darryl Durr, an inmate incarcerated at defendant, Ohio State Penitentiary (“OSP”), related OSP mailroom staff received a CD on January 26, 2008 that he had ordered from Black Pearls Enterprise, a company based in the Philippines. Plaintiff recalled the CD was not forwarded to his possession, but was withheld. Plaintiff stated he was given a notice of withholding slip and was informed by OSP property room personnel that the CD “appeared to be used, because the packaging was opened.” Plaintiff pointed out he filed an informal complaint resolution (“ICR”) in an attempt to retrieve or at least examine his withheld CD. Plaintiff reported he received no response to his ICR and subsequently filed two additional ICRs in an effort to establish that the ordered CD was new, not used, and had been ordered during January 2008. Plaintiff maintained he was told in March 2008 that the CD was destroyed as contraband pursuant to defendant’s internal regulations. Plaintiff contended his CD was destroyed by OSP staff without any authority or right and he has consequently filed this complaint seeking to recover \$80.00, the stated purchase price of the CD. The filing fee

was paid.

{¶ 2} Defendant acknowledged a CD was confiscated from plaintiff by OSP personnel. Defendant stated “that it did wrongfully confiscated a used CD from [p]laintiff.” Defendant further acknowledged plaintiff was informed the confiscated CD was destroyed. However, according to defendant the CD was not destroyed and the item was discovered in storage in the OSP package room. Defendant reported that an offer was made to return the CD to plaintiff’s possession, but he refused to accept the property. Furthermore, defendant disputed plaintiff’s damage claim of \$80.00, contending the CD, Heartfeld, by the artist Kyla, may be purchased for \$17.09 plus \$4.90 for shipping and handling. Defendant argued plaintiff’s claim should be denied since it “remains willing to return the CD to [p]laintiff.”

{¶ 3} Defendant submitted a report from the OSP Assistant Inspector, Antonio Cardona, regarding his findings concerning the matter of plaintiff’s confiscated CD. Cardona recorded a CD intended for plaintiff was received at the OSP package room on January 24, 2008 and the CD was confiscated as contraband with plaintiff being issued a form identified as a “Notification of Contraband.” On the “Notification of Contraband” was a notation that the confiscated CD was destroyed on February 12, 2008. Cardona noted that at sometime after June 12, 2008, the OSP package room “was checked and the CD the inmate filed his claim on was found in the box of items to be destroyed.” Cardona stated he offered the recovered CD to plaintiff who refused the offer. Cardona recalled plaintiff produced a receipt bearing the name of a company Black Pearls Enterprise which seemingly indicated plaintiff purchased the Kyla CD for \$80.00. Cardona related he attempted to research Black Pearls Enterprise to verify its existence and could not obtain any information about the entity. Cardona further related he discovered the Kyla, Heartfelt CD retails between “\$17.09 plus S & H to \$21.99 Plus S & H.”

{¶ 4} Plaintiff filed a response contending his Kyla Heartfelt CD was destroyed by OSP staff on or about February 12, 2008. Plaintiff specifically denied he was offered the Kyla Heartfelt CD by OSP Assistant Inspector Antonio Cardona. Plaintiff insisted that he would have accepted the CD if it had been offered to him by OSP personnel. Plaintiff disputed defendant’s assertion that the confiscated CD was found when a search of the OSP package room was made after June 12, 2008. Plaintiff submitted

copies of two documents from OSP; one, an “Informal Complaint Resolution” dated March 17, 2008, the second, a “Notice of An Unauthorized Item Received” compiled when the CD was confiscated. Both documents indicate the confiscated CD was destroyed on February 12, 2008. Plaintiff related he authorized the mailing of the confiscated CD from OSP but it was instead destroyed by OSP staff. Plaintiff explained the confiscated Kyla Heartfelt CD “is an import which contains different versions of songs compared to a US bought Kyla CD. Kyla, nee, Melanie Hernandez Calumpad, is a Filipino Rhythm and Blues singer who had her Heartfelt album released in October 2007. The Heartfelt album contains seventeen tracks in English language songs, mostly revivals, produced by the EMI Philippines label. Plaintiff submitted copies of two documents purported to be sales invoices from Black Pearl Enterprise for the Kyla Heartfelt CD. One sales invoice number 0016447 dated January 11, 2008 lists the purchase price of the CD at \$80.00 in United States currency. The second sales invoice number 0016447 dated January 11, 2008 lists the purchase price of the CD at \$3,200.00 in Philippine currency.

{¶ 5} Plaintiff submitted a copy of a “Disposition of Grievance” dated April 1, 2008. In reference to the property claimed it was recorded in the “Disposition of Grievance” that “[t]he CD in question was mailed into the facility (OSP) as a package sent first class.” Additionally, it was recorded, “[a]s such, this CD was not authentic in its publication and appeared to be used as it was not sealed when it was removed from the package envelope.”

CONCLUSIONS OF LAW

{¶ 6} 1) 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 of 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, 14 OBR 506, 471 N.E. 2d 776; see also *Von Hoene v. State* (1985), 20 Ohio App. 3d 363, 364, 20 OBR 467, 486 N.E. 2d 868. 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, 99 S. Ct. 1861, 60 L. Ed. 2d 47.

{¶ 7} 2) Prison regulations, including those contained in the Ohio Administrative Code, “are primarily designed to guide correctional officials in prison administration rather than to confer rights on inmates.” *State ex rel. Larkins v. Wilkinson*, 79 Ohio St. 3d 477, 1997-Ohio-139, 683 N.E. 2d 1139, citing *Sandin v. Conner* (1995), 515 U.S. 472, 481-482, 115 S. Ct. 2293, 132 L. Ed. 2d 418. Additionally, this court has held that “even if defendant had violated the Ohio Administrative Code, no cause of action would exist in this court. A breach of internal regulations in itself does not constitute negligence.” *Williams v. Ohio Dept. of Rehab. and Corr.* (1993), 67 Ohio Misc. 2d 1, 3, 643 N.E. 2d 1182. Accordingly, to the extent plaintiff alleges that OSP staff failed to comply with internal prison regulations regarding contraband disposition and the Ohio Administrative Code, he fails to state a claim for relief.

{¶ 8} 3) This court has previously held that property in an inmate’s possession which cannot be validated by proper indicia of ownership is contraband and consequently, no recovery is permitted when such property is confiscated. *Wheaton v. Department of Rehabilitation and Correction* (1988), 88-04899-AD.

{¶ 9} 4) Plaintiff has no right to pursue a claim for destroyed property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1988), 87-02540-AD; *Radford v. Department of Rehabilitation and Correction* (1985), 84-09071.

{¶ 10} 5) An inmate plaintiff is barred from pursuing a claim for the loss of use of restricted property when such property is declared impermissible pursuant to departmental policy. *Zerla v. Dept. of Rehab. and Corr.* (2001), 2000-09849-AD.

{¶ 11} 6) An inmate maintains no right of ownership in property which is impermissibly altered and therefore, has no right to recovery when the altered property is lost or destroyed. *Watley v. Ohio Department of Rehabilitation and Correction*, Ct. of Cl. No. 2005-05183-AD; jud, 2005-Ohio-4320; *Watson v. Ohio State Penitentiary*, Ct. of Cl. No. 2007-05229-AD, 2008-Ohio-2848.

{¶ 12} 7) Evidence has shown the CD sent for plaintiff was altered (unsealed) and consequently was considered impermissible. No recovery can be had for the loss or destruction of impermissible altered property. See *Kemp v. Ohio State Penitentiary*, Ct. of Cl. No. 2006-02587-AD, 2006-Ohio-7247.

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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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
1/13
Filed 1/29/09
Sent to S.C. reporter 4/24/09