

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

GAREY SMITH

Plaintiff

v.

SOUTHERN OHIO CORRECTIONAL FACILITY

Defendant

Case No. 2008-11516-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On or about August 14, 2008, plaintiff, Garey Smith, an inmate was transferred from the Hamilton County jail to defendant, Southern Ohio Correctional Facility (“SOCF”). Plaintiff explained he had accumulated several items of personal property while incarcerated in Hamilton County and the items were forwarded to SOCF staff by a Hamilton County Sheriff’s Deputy. Plaintiff related he requested the forwarded property be mailed from SOCF at his own expense and he authorized the mailing by filling out a cash slip to pay for postage.

{¶ 2} 2) Plaintiff stated the property was not mailed out of SOCF and “[t]here is no record or information of what happened to my property.” Plaintiff asserted defendant violated internal policy and regulations by not mailing his property from SOCF to his home address. Consequently, plaintiff filed this complaint seeking to recover \$112.00, the estimated value of the property that was brought with him to SOCF from the Hamilton County jail. Payment of the \$25.00 filing fee was waived.

{¶ 3} 3) Defendant denied any liability in this matter asserting that under

internal policy “the only things inmates may have in their possession when going to and from court are their necessary legal documents.” Plaintiff was in the custody of the Hamilton County Sheriff’s Department from April 4, 2008 to August 14, 2008 to be available for court appearances in Hamilton County. Defendant acknowledged plaintiff returned to SOCF on August 14, 2008 with items he had acquired in Hamilton County, “primarily food items some underwear, socks, and a book.” The items were declared impermissible under internal policy and therefore SOCF refused to accept the property. Defendant contended that despite the fact plaintiff believed he could have the property mailed out, SOCF was not required to accept delivery of the property and decided not to accept the property. Defendant further contended “SOCF owed no duty to the plaintiff or his property” and acted correctly under internal policy guidelines.

{¶ 4} 4) Plaintiff filed a response arguing defendant violated policy by not accepting the property. Plaintiff also asserted defendant violated regulations by not permitting him to mail the property to his home address at his own expense.

CONCLUSIONS OF LAW

{¶ 5} 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 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, 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.

{¶ 6} 2) Prison regulations, including those contained in the Ohio Administrative Code, “are primarily matters 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.

{¶ 7} 3) 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. Plaintiff’s property loss claim is denied.

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

GAREY SMITH

Plaintiff

v.

SOUTHERN OHIO CORRECTIONAL FACILITY

Defendant

Case No. 2008-11516-AD

Deputy Clerk Daniel R. Borchert

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:

Garey Smith, #435-760
P.O. Box 45699
Lucasville, Ohio 45699

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
770 West Broad Street
Columbus, Ohio 43222

RDK/laa
5/18
Filed 5/29/09
Sent to S.C. reporter 9/29/09