

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

ALAN GILLESPIE

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTIONS

Defendant

Case No. 2009-01697-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, Alan Gillespie, filed this action grounded in false imprisonment alleging he was held in the custody of defendant, Department of Rehabilitation and Correction (“DRC”), for a period of six days beyond the expiration of his criminal sentence. On January 7, 2009, plaintiff was sentenced in the Cuyahoga County Court of Common Pleas under Case No. CR-08-511382 to eight months for Aggravated Assault. The sentencing court granted 241 days in jail time credit to plaintiff for time already served in the Cuyahoga County Jail. On that same day, plaintiff was also sentenced on Case No. CR-08-507915 to eight months confinement for Receiving Stolen Property. This sentence was ordered to run concurrently with the sentence under Case No. CR-08-511382. After sentencing, plaintiff was removed to the Cuyahoga County Jail where he remained an additional five days to January 12, 2009 when he was transported to defendant’s Lorain Correctional Institution (“LorCI”). Plaintiff stated he was issued a prison number at LorCI and released from custody by 6:00 p.m. on January 12, 2009. Plaintiff contended he was held for a period of six days beyond the expiration of his criminal sentence based on the actual time he served in the

Cuyahoga County Jail. Plaintiff filed this complaint against DRC seeking to recover \$2,400.00 claiming he is entitled to the stated damages due to the fact he was “held beyond my sentence by 6 days at \$400.00 (four hundred dollars) per day times 6 days.” Plaintiff did not explain his stated damage calculation of \$400.00 per day. Plaintiff did not offer any authority to establish how he was falsely imprisoned by DRC when he served his entire sentence including time in excess of his criminal sentence in the custody of the Cuyahoga County Sheriff’s Department in the Cuyahoga County Jail. Payment of the \$25.00 filing fee was waived.

{¶ 2} Defendant contended plaintiff has failed to produce any evidence to establish he was falsely imprisoned by DRC. Defendant explained plaintiff was transported by the Cuyahoga County Sheriff’s Department on January 12, 2009 to LorCI with 245 days jail time to be credited to his criminal sentence of 240 days. Defendant stated “[u]pon admission (plaintiff’s) sentence was calculated and it was quickly determined that (plaintiff’s) sentence had been consumed in its entirety by the jail time credit” and consequently, plaintiff was released the same day he was transported to LorCI. Defendant asserted plaintiff failed to prove any elements of false imprisonment on the part of DRC.

{¶ 3} “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.’” *Bennett v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St. 3d 107, 109, 573 N.E. 2d 633, quoting 1 Harper & James, *The Law of Torts* (1956) 226, Section 3.7.

{¶ 4} However, plaintiff’s claim for false imprisonment may only be maintained if defendant intentionally continued to confine him with the knowledge that his sentence had expired and therefore, no privilege justifying continuing confinement existed. See *Mickey v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2001-12215-AD, 2002-Ohio-3233.

{¶ 5} Although defendant is required to credit an inmate with jail time served in calculating a term of actual confinement, “it is the trial court that makes the factual determination as to the number of days confinement that (an inmate) is entitled to have credited toward his sentence.” *State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio St. 3d 476, 2003-Ohio-2061, ¶7.

{¶ 6} 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), 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*, 60 Ohio St. 3d at 111, 573 N.E. 2d 633, quoting *Diehl v. Friester* (1882), 37 Ohio St. 473, 475.

{¶ 7} 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 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*, 68 Ohio App. 3d at , 572, 640 N.E. 2d 879. Plaintiff has failed to produce evidence to establish any claim based on false imprisonment against defendant.

{¶ 8} In the instant claim, the facts establish that plaintiff was released from incarceration when defendant had knowledge his sentence expired and after all known jail-time credit mandated by the sentencing authority was given against that prison term. Under these facts, plaintiff as a matter of law is precluded from recovery of damages from defendant based upon an action grounded in false imprisonment. See *Lucy v. Richland Correctional Inst.*, Ct. of Cl. No. 2002-03368-AD, jud; 2002-Ohio-4621.

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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
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