

# 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

ARLIE S. BURNS, SR.

Plaintiff

v.

DEPARTMENT OF CORRECTIONS

Defendant

Case No. 2007-05644-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

{¶1} Plaintiff, Arlie S. Burns, Sr., filed this action alleging he was falsely imprisoned by defendant, Department of Rehabilitation and Correction (DRC) for a period of forty-five days beyond the expiration date of his criminal sentence. Plaintiff requested damages of \$1,058.00 for work loss and \$1,442.00 for loss of freedom and emotional injury. Total damages claimed amounts to \$2,500.00, the statutory maximum amount allowed under R.C. 2743.10. The filing fee was waived.

{¶2} On May 24, 2006, plaintiff appeared in the Common Pleas Court of Richland County where he received a suspended prison sentence of six months based on a conviction for Possession of Drugs, a violation of R.C. 2925.11(A), a fifth degree felony. In lieu of an actual prison sentence, plaintiff was sentenced to eighteen months Community Control supervised by the State Probation Department in Mansfield, Ohio. A sentencing entry issued by the Common Pleas Court of Richland County advised that violation of community control would result in imposition of an actual prison term of six months duration. The sentencing entry served on May 25, 2006 was signed by Judge James D. Henson.

{¶3} On October 13, 2006, plaintiff, represented by counsel, appeared again in the Common Pleas Court of Richland County before Judge James D. Henson for re-sentencing. Plaintiff's court appearance was due to the fact he had committed a probation violation essentially violating the terms and conditions of community control

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imposed on May 25, 2006. In the October 2006 re-sentencing entry, plaintiff was sentenced to serve a term of actual incarceration in the Ohio State Prison system for a period of nine months. The imposition of this nine month prison term was based on plaintiff's original conviction in May 2006, for Possession of Drugs, a violation of R.C. 2925.11(A), a fifth degree felony. The nine-month prison sentence imposed in October 2006 for violating community control was imposed despite the fact that the May 2006 sentencing entry ordered imposition of a six month prison term if community control conditions were violated. Specific language in the May 2006 sentencing entry included: "[v]iolation of community control will lead to a prison term of six (6) months/years and 5 years of post release control." Both the May 2006 sentencing entry and the October 2006 re-sentencing entry were signed by Judge James D. Henson of the Common Pleas Court of Richland County. There is no indication either plaintiff or his attorney objected to the imposition of a nine-month prison term at the time re-sentencing was ordered during the October 13, 2006 court appearance.

{¶4} Plaintiff was admitted to defendant's custody on October 18, 2006 to begin serving his imposed nine-month prison sentence at the Lorain Correctional Institution ("LorCI"). Following the nine-month prison sentence ordered by the Common Pleas Court of Richland County, defendant's Bureau of Sentence Computation ("BOSC")

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calculated plaintiff's term of incarceration at LorCI to run from October 18, 2006 to June 13, 2007. The calculation done by BOSC reflected the inclusion of thirty-four days of jail time credit plaintiff was ordered to serve. On or about April 13, 2007, plaintiff while incarcerated at LorCI, filed a "Motion to Vacate Void or Voidable Judgment" in the Common Pleas Court of Richland County. Essentially, plaintiff was seeking to have the nine-month prison sentence imposed by the court in October 2006 vacated and replaced by imposition of the six-month sentence addressed in the original sentencing entry dated May 25, 2006. On April 18, 2007, Judge James D. Henson determined the May 25, 2006 sentencing entry controlled plaintiff's term of incarceration in connection with a community control violation and ordered the "May 25, 2006 sentencing entry is modified to reflect the six month term." On Friday, April 20, 2007, BOSC received the judgment entry modifying plaintiff's prison term to reflect the six month period ordered in the original May 25, 2006 sentencing entry. On Monday, April 23, 2007, BOSC telephone Judge Henson's office to verify the sentencing modification for plaintiff from nine months to six months. The six month sentence was confirmed and plaintiff's release date was accordingly recalculated to reflect an actual release date of March 14, 2007. Therefore, plaintiff was released from incarceration on April 23, 2007, the same day verification of the six month sentence was verbally confirmed by the Common Pleas

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Court of Richland County.

{15} Plaintiff asserted he was held for forty-five days beyond the expiration of his sentence due to a void judgment sentencing him to nine months incarceration instead of the six month sentence he should have received based on the May 25, 2006 judgment entry from the Common Pleas Court of Richland County. Plaintiff further asserted both the Richland County Prosecutor's Office and Judge Henson "acknowledged that the sentencing judgment (of October 13, 2006) was a void judgment." Plaintiff submitted a document from Christopher R. Tunnell, a Richland County Assistant Prosecuting Attorney captioned "Response To Motion To Vacate Void Or Voidable Judgment." Tunnell pointed out the May 25, 2006 sentencing entry recorded that if plaintiff violated community control sanctions a prison term of up to six months would be imposed. Tunnell noted any sentence imposed on plaintiff for a community control violation should have been limited to the terms of the original sentencing entry of May 25, 2006 (six months). Plaintiff also submitted the April 18, 2007 judgment entry signed by Judge Henson where he ordered plaintiff's prison term to reflect the intent of the May 25, 2006 entry imposing a six month sentence for a community control violation. In this entry Henson wrote, "any sentence imposed upon the (plaintiff) for subsequent violation of his community control is limited to the terms of

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the original sentencing entry.” Plaintiff implied defendant knew or should have known the sentencing entry of October 13, 2006 sentencing plaintiff to a nine month term of incarceration constituted a void judgment. Additionally, plaintiff seemingly has contended defendant knew or should have known plaintiff’s prison sentence was limited to a six month term and he was consequently, falsely imprisoned for any period of time he was held beyond the expiration of that six month period.

{¶6} Plaintiff contended the facts of this claim prove he was falsely imprisoned by defendant for a forty-five day period and he is therefore entitled to damages equaling fifty percent of the amount recoverable for a wrongfully imprisoned individual under R.C. 2743.48(E)(2)(b).<sup>1</sup> The standard measure of damages in a false imprisonment claim is based on one-half of the statutory formula provided in R.C. 2743.48(E)(2)(b). See

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<sup>1</sup> R.C. 2743.48(E)(2)(b) states:

“(2) In a civil action as described in division (D) of this section, upon presentation of requisite proof to the court, a wrongfully imprisoned individual is entitled to receive a sum of money that equals the total of each of the following amounts:

“(b) For each full year of imprisonment in the state correctional institution for the offense of which the wrongfully imprisoned individual was found guilty, forty thousand three hundred thirty dollars or the adjusted amount determined by the auditor of state pursuant to section 2743.49 of the Revised Code, and for each part of a year of being so imprisoned, a pro-rated share of forty thousand three hundred thirty dollars or the adjusted amount determined by the auditor of state pursuant to section 2743.49 of the Revised Code;”

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*Rainey v. Lorain Corr. Fac.* (1997), 121 Ohio App. 3d 428, 700 N.E. 2d 90; *Clark v. Ohio Dept. of Rehab. & Corr.* (2000), 104 Ohio Misc. 2d 14, 727 N.E. 2d 986; *Bay v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2002-07231, 2004-Ohio-7296; *Stafford v. Correction Reception Center*, Ct. of Cl. No. 2004-07000-AD, jud (reversed), 2004-Ohio-7085.

{¶17} Plaintiff also pointed out he was receiving social security disability prior to his incarceration in the amount of \$499.00 per month. The social security payments were discontinued during the period of plaintiff's imprisonment. Plaintiff requested he receive reimbursement for the social security payments not paid during the forty-five day period defendant held him beyond the expiration of his sentence. Plaintiff asserted the unpaid social security disability should be considered lost wages. Plaintiff requested reimbursement of \$738.25 representing unpaid social security for a forty-five day period, plus additional damages based on the standard formula addressed in *Rainey*.

{¶18} Defendant argued plaintiff failed to produce sufficient evidence to establish the necessary elements to prove he was falsely imprisoned and therefore, entitled to damages arising from the false imprisonment. Defendant explained plaintiff was admitted into DRC custody on October 18, 2006 to serve a nine month prison sentence

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in accordance with the sentencing entry issued by the Richland County Court of Common Pleas dated October 13, 2006. Defendant related, “[t]here is no mention in this entry that the prison term was imposed for a violation of community control.” A copy of the October 13, 2006 sentencing entry caption RE-SENTENCING ENTRY was submitted by plaintiff. The trier of fact finds the October 13, 2006 entry does not contain any language to infer the prison sentence imposed on plaintiff was for a community control violation. Defendant denied the May 25, 2006 entry sentencing plaintiff to community control along with a six month suspended sentence was submitted when plaintiff entered DRC custody. Defendant acknowledged BOSC staff received an entry from the Richland County Common Pleas dated April 28, 2007, in which plaintiff’s sentence was modified by the sentencing court back to six months in compliance with the May 25, 2006 original sentencing entry. Defendant also acknowledged BOSC personnel received the May 25, 2006 sentencing entry along with the April 18, 2007 sentence modification entry on April 20, 2007. Defendant noted plaintiff was promptly released from custody as soon as the April 18, 2007 judgment entry modifying plaintiff’s sentence was verified. Defendant argued that under the facts and circumstances presented plaintiff has not proven he was falsely imprisoned by DRC.

{19} Plaintiff’s claim for false imprisonment rests on the contention that

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defendant confined him past the expiration of his sentence in reliance on a void sentencing entry. “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, 4 O.O. 3d 158, 159, 362 N.E. 2d 646, 647, 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. 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. Even under circumstances where a judgment is subsequently determined to be void, defendant cannot be held liable for false imprisonment when evidence establishes it had no knowledge nor could have any knowledge that the judgment ordering confinement would eventually be found void. *Fryerson v. Ohio Dept.*

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*of Rehab. and Corr.*, Franklin App. No. 02AP-1216, 2003-Ohio-2730.

{¶10} In the instant claim, all sentencing entries reflect plaintiff was convicted of possession of drugs, a 5<sup>th</sup> degree felony. The maximum sentence for a 5<sup>th</sup> degree felony conviction is twelve months with the minimum sentence allowable is six months. (R.C. 2929.14(A)(5))<sup>2</sup> Plaintiff was actually sentenced to a term of six months which was suspended, although based on his conviction the six month sentence was one of seven different term lengths that could have been imposed.

{¶11} The trial judge at a sentencing hearing when sentencing an offender to community control must follow the requirement of R.C. 2929.19(B)(5)<sup>3</sup>; informing the

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<sup>2</sup> 2929.14 Definite Prison terms.

“(A) Except as provided in division (C), (D)(1), (D)(2), (D)(3), (D)(4), (D)(5), (D)(6), (G), or (L) of this section and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to this chapter, the court shall impose a definite prison term that shall be one of the following:

“(5) For a felony of the fifth degree, the prison term shall be six, seven, eight, nine, ten, eleven, or twelve months.”

<sup>3</sup> R.C. 2929.19 states in pertinent part:

“(A) The court shall hold a sentencing hearing before imposing a sentence under this chapter upon an offender who was convicted of or pleaded guilty to a felony \*\*\*

“(B)(5) If the sentencing court determines at the sentencing hearing that a community control sanction should be imposed and the court is not prohibited from imposing a community control sanction,

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offender of the “specific prison term that may be imposed” of a fixed number of months or years if community control conditions are violated. See *State v. Brooks*, 103 Ohio St. 3d 134, 2004-Ohio-4746. Also, under the mandate of R.C. 2929.15(B)<sup>4</sup>, which details procedures for a trial court to follow when an offender violates conditions of community control, a trial judge when imposing a prison sentence for such a violation may not

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the court shall impose a community control sanction. The court shall notify the offender that, if the conditions of the sanctions are violated, if the offender commits a violation of any law, or if the offender leaves this state without the permission of the court or the offender’s probation officer, the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender and shall indicate the specific prison term that may be imposed as a sanction for the violation, as selected by the court from the range of prison terms for the offense pursuant to section 2929.14 of the Revised Code.”

<sup>4</sup> R.C. 2929.15(B) provides:

“(B) If the conditions of a community control sanction are violated or if the offender violates a law or leaves the state without the permission of the court or the offender’s probation officer, the sentencing court may impose a longer time under the same sanction if the total time under the sanctions does not exceed the five-year limit specified in division (A) of this section, may impose a more restrictive sanction under section 2929.16, 2929.17, or 2929.18 of the Revised Code, or may impose a prison term on the offender pursuant to section 2929.14 of the Revised Code. The prison term, if any, imposed upon a violator pursuant to this division shall be within the range of prison terms available for the offense for which the sanction that was violated was imposed and shall not exceed the prison term specified in the notice provided to the offender at the sentencing hearing pursuant to division (B)(3) of section 2929.19 of the Revised Code. The court may reduce the longer period of time that the offender is required to spend under the longer sanction, the more restrictive sanction, or a prison term imposed pursuant to this division by the time the offender successfully spent under the sanction that was initially imposed.”

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impose a term exceeding the term the offender was originally notified about at the sentencing hearing. *Brooks* at ¶ 22. In other words, the notice of a possible specific prison term for a community control violation acts as a ceiling on the potential term of incarceration that may be imposed. Applying these requirements to the present claim, the sentencing court when sentencing plaintiff to a prison term for a community control violation was confined to the term ceiling of six months expressed in the May 24, 2006 sentencing hearing and memorialized in the May 25, 2006 sentencing entry. The nine month sentence imposed on plaintiff on October 13, 2006 was void.

{¶12} However, defendant denied having any knowledge that the October 13, 2006 sentencing entry sentencing plaintiff to a nine month prison term was void. Based on plaintiff's conviction, he could have been sentenced to a term ranging from six to twelve months. Therefore, the sentencing entry imposing a nine month sentence without any additional documentation did not appear to be facially void. Evidence has shown defendant first received notice that plaintiff was being held beyond the expiration of his prison term on April 20, 2007, when an entry modifying sentencing was received from the Richland County Court of Common Pleas. Along with this entry, defendant received the May 25, 2006 original sentencing entry sentencing plaintiff to six months and placing him on eighteen months community control. Both entries received were

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signed by Judge Henson. Although defendant received these entries on April 20, 2007, which were effectively ordering plaintiff's release, plaintiff was not released from incarceration until April 23, 2007, when the entry modifying sentencing was verified. The court concludes defendant had sufficient documentation on April 20, 2007 to verify the authenticity of the entries from the Richland County Court of Common Pleas and should have immediately released plaintiff from incarceration. Consequently, defendant knowingly falsely imprisoned plaintiff for a period of three days. Based on the period of his false imprisonment, plaintiff is entitled to work loss damages of \$49.90 and other damages in the amount of \$165.72. Total damages recoverable in this action amount to \$215.62.

[C



Dept. of Corr., 2008-Ohio-2635.]

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DEPARTMENT OF CORRECTIONS

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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 plaintiff in the amount of \$215.62. Court costs are assessed against defendant.

DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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RDK/laa  
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