



{¶2} This matter was referred to a court-appointed magistrate pursuant to Civ.R. 53(C) and Loc.R. 12(M) of the Tenth District Court of Appeals. The magistrate issued a decision which is appended to this decision, including findings of fact and conclusions of law, and recommended that this court deny relator's motion for summary judgment and grant OAPA's motion for summary judgment. Relator has filed objections to the magistrate's decision.

{¶3} We first note that the magistrate's decision was filed November 30, 2010, and relator's objections to the magistrate's decision were filed December 30, 2010. Civ.R. 53(D)(3)(b)(i) requires that objections to a magistrate's decision be made within 14 days of the filing of the decision. Civ.R. 53(D)(5) does permit this court to extend the time for a party to file objections to a magistrate's decision for good cause shown, but relator neither sought an extension nor presented any argument for good cause. Therefore, relator's objections were untimely. This court need not address untimely objections to a magistrate's decision. *State ex rel. Rosch v. Ohio Civ. Rights Comm.*, 10th Dist. No. 04AP-340, 2004-Ohio-1625, ¶3 (declining to address objections to a magistrate's decision that were filed five days late).

{¶4} Nevertheless, we have reviewed relator's objections and find them without merit. In his objections, it appears that relator has conceded that OAPA corrected his jail-time credit in its October 21, 2010 parole decision sheet. Furthermore, OAPA attached to its motion for summary judgment an affidavit by Melissa Adams, Chief of the Bureau of Sentence Computation, in which Adams asserts that relator's sentence computation is correct and explains her reasoning. Relator does not further contest Adams's computation in his objections, and we see no reason to question the magistrate's dependence upon

Adams's affidavit. For these reasons, we find relator's objections were untimely filed, and even if they had been filed timely, they would have been without merit.

{¶5} After an examination of the magistrate's decision, an independent review of the record pursuant to Civ.R. 53, and due consideration of relator's objections, we find the objections were untimely. Accordingly, we adopt the magistrate's decision as our own with regard to the findings of fact and conclusions of law, and we deny relator's request for a writ of mandamus.

*Objections overruled; writ of mandamus denied.*

FRENCH and DORRIAN, JJ., concur.

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has filed a memorandum opposing relator's motion as well as a cross-motion for summary judgment.

Findings of Fact:

{¶7} 1. Relator is an inmate currently incarcerated at Grafton Correctional Institution.

{¶8} 2. On July 13, 2010, relator filed this mandamus action requesting that OAPA be ordered to credit him with 131 days of jail-time credit. According to relator, the amount of his jail-time credit has been miscalculated.

{¶9} 3. On August 23, 2010, relator filed a motion for summary judgment. Relator attached to that motion one page copied from the Ohio Department of Rehabilitation and Correction ("ODRC") website representing the most recent seven convictions.<sup>1</sup> According to relator's documents, under case Nos. CR06485306 and CR06489284 relator has 131 days of jail-time credit.<sup>2</sup>

{¶10} 4. Relator also attaches various letters which he has sent in an effort to address this issue and have his record credited with 131 days of jail-time credit.

{¶11} 5. Because he did not receive the response he sought, relator filed this mandamus action and has filed this motion for summary judgment.

{¶12} 6. On October 8, 2010, OAPA filed a memorandum opposing relator's motion for summary judgment and a cross-motion for summary judgment.

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<sup>1</sup> Relator does not include the ten additional convictions for which he is incarcerated.

<sup>2</sup> Even on this one page that relator attaches, the other convictions for which relator is incarcerated each demonstrate a different number of days of jail-time credit. In case No. 877040, relator has 79 days of jail-time credit; in case No. CR167889, relator has 96 days of jail-time credit; and in case No. CR1563, relator has 397 days of jail-time credit.

{¶13} 7. OAPA has included the affidavit of Melissa Adams, the Chief of the Bureau of Sentence Computation for ODRC. According to Ms. Adams' affidavit, she has "personally reviewed the sentence computation of Bernard Keith #522-903 prepared by former Quality Assurance Officer Lora Turjanica in response to a request from the Ohio Attorney General's Office. \* \* \* The sentence computation is accurate."

{¶14} 8. The computation to which Ms. Adams refers is attached to OAPA's cross-motion for summary judgment. This letter, dated August 12, 2010, details relator's convictions dating back to 1972 and provides a thorough explanation for his sentence and the computation of the number of days of jail-time credit:

Inmate Keith 134-981 was admitted to the Ohio Department of Rehabilitation and Corrections on July 27, 1972 serving on Cuyahoga case CR1563 Murder ordered to serve a Life sentence with 397 days of jail time credit. On April 2, 1981 he received a Furlough and on July 2, 1981 was Furlough to Parole. He was declared a Technical Parole violator on 9-28-1981.

Inmate Keith 165-935 was returned to the Ohio Department of Rehabilitation and Corrections on December 12, 1981 serving Cuyahoga case CR167889 Aggravated Robbery 7-25 cc/w Possession Criminal Tools ½-5 with 96 jail time credit ordered cs/w Parole violation. He received a Parole on March 28, 1986 and was declared a Parole violator on January 22, 1987. He was returned to the Ohio Department of Rehabilitation and Corrections on February 9, 1987 and taken out to court for added charges on March 12, 1987.

Inmate Keith 196-982 was returned with added charges on May 29, 1987 serving on Stark case 877040 for Theft 3-5 years with 79 days jail time credit cs/w Parole violations. He received a Parole on November 21, 1990. He was declared a Parole Violator in Custody on May 24, 1991 and was returned as a Technical Parole Violator on June 24, 1991. He again was Paroled on May 1, 2000, declared a Parole Violator at Large on July 25, 2001 and Restored while at Large on September 8, 2001.

Inmate Keith 442-599 was admitted to the Ohio Department of Rehabilitation and Corrections on February 14, 2003 serving on Lorain case 01CR058982 Forgery six months with credit for time served cc/w Parole violations. He was Paroled on February 9, 2004, declared a Parole Violator at large on June 8, 2006 and Restored while at Large on October 24, 2006.

Inmate Keith 522-903 was admitted to the Ohio Department of Rehabilitation and Corrections on March 7, 2007 serving on Cuyahoga case CR06485306 Forgery nine months with 131 days jail time credit cc/w Cuyahoga case CR06489284 3 counts of Forgery nine months cc/w Theft none [sic] months with 131 days jail time credit. His Expiration of Stated Term and First Hearing Date were calculated on nine months with 131 days of credit and was July 26, 2007. Inmate Keith was taken out to court on September 5, 2007 and returned on September 13, 2007 for added charges from Lorain on the following cases: 05CR068058 Theft serving a 1 year term; 06CR072409 for Forgery and Taking Identity of Another 1 year term each count; 06CR072230 for Theft, Forgery and Taking Identity of Another 1 year each count; 07CR072542 2 counts of Forgery 1 year each count; 05CR068994 Breaking & Entering 1 year term; and 06CR071938 Escape 2 year term with one day jail time credit ordered concurrently with each other and with present sentences. The Expiration of Stated Term & First Hearing Dates was recalculated effective September 13, 2007 2 years with one day jail time credit as August 6, 2009. On March 4, 2008 the Bureau of Sentence Computation received corrected Sheriff's Letters for jail time credit for each case. The controlling case is 06CR071938 2 years and dates were applied as follows:

01-24-2007 to 01-25-2007	= 2
01-30-2007 to 01-31-2007	= 2
02-20-2007 to 02-21-2007	= 2
05-17-2007 to 05-22-2007	= 6
06-13-2007 to 07-03-2007	= 21
07-17-2007 to 07-27-2007	= 11
09-04-2007 to 09-13-2007	= <u>9</u>
	53

The Expiration of Stated Term & First Hearing Date of 2 years with 53 jail time credit effective September 13, 2007

was July 20, 2009 and his maximum expiration of sentence is Life.

{¶15} 9. The matter is currently before the magistrate on the motions for summary judgment and the evidence attached thereto.

Conclusions of Law:

{¶16} A motion for summary judgment requires the moving party to set forth the legal and factual basis supporting the motion. To do so, the moving party must identify portions of the record which demonstrate the absence of a genuine issue of material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280. Accordingly, any party moving for summary judgment must satisfy a three-prong inquiry showing: (1) that there is no genuine issue as to any material facts; (2) that the parties are entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, which conclusion is adverse to the party against whom the motion for summary judgment is made. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64.

{¶17} When seeking summary judgment on the ground that the nonmoving party cannot prove its case, the moving party bears the initial burden of informing the court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on an essential element of the nonmoving party's claim. *Dresher*. A moving party does not discharge this initial burden under Civ.R. 56 by simply making a conclusory allegation that the nonmoving party has no evidence to prove its case. *Id.* Rather, the moving party must affirmatively demonstrate, by affidavit or other evidence allowed by Civ.R. 56(C), that the nonmoving party has no evidence to support its claims. *Id.* If the moving party meets this initial burden, then the nonmoving

party has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue for trial and, if the nonmoving party does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party. *Id.*

{¶18} First considering relator's motion for summary judgment, the magistrate specifically notes the following: (1) relator has not provided the court with accurate information concerning his convictions and his incarceration, and (2) relator's incomplete evidence does not demonstrate that he is entitled to judgment as a matter of law. As such, the magistrate finds that relator's motion for summary judgment should be denied.

{¶19} Turning to OAPA's cross-motion for summary judgment, the magistrate specifically finds: (1) OAPA has attached an affidavit from Ms. Adams, Chief of the Bureau of Sentence Computation for ODRC; (2) Ms. Adams has reviewed the sentence computation prepared by Quality Assurance Officer Ms. Turjanica; (3) OAPA has provided a detailed explanation which considers all of relator's convictions and sentences and which further explains why the computation is correct and relator's computation is incorrect; (4) meets the initial burden of demonstrating the absence of a genuine issue of material fact; and (5) demonstrating that OAPA is entitled to summary judgment.

{¶20} Relator has not come forward to meet his reciprocal burden outlined in Civ.R. 56(E) to demonstrate that there remains a genuine issue for trial. As such, the magistrate finds that summary judgment in favor of OAPA is appropriate.

{¶21} Because relator has failed to present anything other than conclusory allegations regarding his entitlement to a writ of mandamus, relator's motion for summary judgment is denied. Because OAPA has come forward with verified evidence thoroughly explaining and detailing relator's convictions and sentences which explains the

computations and explains how relator could be confused as to the number of days of jail-time credit, the magistrate finds that OAPA has met its burden of identifying portions of the record demonstrating the absence of a genuine issue of material fact and affirmatively demonstrating that relator has no evidence to support his claims and the magistrate finds that respondent's motion for summary judgment should be granted.

/s/ Stephanie Bisca Brooks  
STEPHANIE BISCA BROOKS  
MAGISTRATE

#### **NOTICE TO THE PARTIES**

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).