

[Cite as *State ex rel. Thompson v. Ohio Adult Parole Auth.*, 2011-Ohio-429.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio ex rel. Ramon A. Thompson, :  
Relator, :  
v. : No. 10AP-24  
Ohio Adult Parole Authority for the Ohio : (REGULAR CALENDAR)  
Dept. of Rehab. and Corrections, :  
Respondent. :  
:

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D E C I S I O N

Rendered on February 1, 2011

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*Ramon A. Thompson, pro se.*

*Mike DeWine, Attorney General, and Ashley D. Rutherford,*  
for respondent.

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IN MANDAMUS  
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

SADLER, J.

{¶1} Relator, Ramon A. Thompson, an inmate currently incarcerated at the Lake Erie Correctional Institution, filed this original action seeking a writ of mandamus compelling respondent, Ohio Adult Parole Authority/Ohio Department of Rehabilitation and Correction ("respondent" and "ODRC"), to grant him final release, pursuant to R.C. 2967.16, in Cuyahoga County Court of Common Pleas case No. CR-01-405065-ZA.

{¶2} Pursuant to Civ.R. 53 and Loc.R. 12(M) of the Tenth District Court of Appeals, this matter was referred to a magistrate who issued a decision, including

findings of fact and conclusions of law, which is appended hereto. Therein, the magistrate found R.C. 2967.16 does not provide relator a clear legal right to the relief he seeks. Based on this finding, the magistrate has recommended that we grant respondent's motion for summary judgment.

{¶3} Relator has filed objections to the magistrate's decision that in essence assert the magistrate erred in concluding relator is not entitled to relief pursuant to R.C. 2967.16. According to relator, the magistrate incorrectly determined he seeks relief, pursuant to R.C. 2967.16, when relator actually seeks "notification of a final release pursuant to R.C. 2967.16(E)." (Objections at 4.) Relator's arguments are misplaced. By virtue of the subsections cited by the magistrate, R.C. 2967.16 does not yet apply to relator; therefore, he cannot be entitled to any "notification" as referenced in R.C. 2967.16(E).

{¶4} Accordingly, relator's objections to the magistrate's decision are overruled.

{¶5} Following an independent review of this matter, we find that the magistrate has properly determined the facts and applied the appropriate law. Therefore, we adopt the magistrate's decision as our own, including the findings of fact and conclusions of law contained therein. In accordance with the magistrate's decision, we grant respondent's motion for summary judgment, and deny relator's request for a writ of mandamus.

*Objections overruled;  
motion for summary judgment granted;  
writ denied.*

BROWN and TYACK, JJ., concur.

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**A P P E N D I X**

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Relator,	:	
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v.	:	No. 10AP-24
	:	
Ohio Adult Parole Authority for the Ohio	:	(REGULAR CALENDAR)
Dept. of Rehab. and Corrections,	:	
	:	
Respondent.	:	
	:	

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M A G I S T R A T E ' S   D E C I S I O N

Rendered on October 27, 2010

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*Ramon A. Thompson, pro se.*

*Richard Cordray, Attorney General, and Ashley D. Rutherford,*  
for respondent.

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IN MANDAMUS  
ON MOTION FOR SUMMARY JUDGMENT

{¶6} In this original action, relator, Ramon A. Thompson, an inmate of the Lake Erie Correctional Institution, requests a writ of mandamus ordering respondent, Ohio Adult Parole Authority/Ohio Department of Rehabilitation and Correction ("respondent" or "ODRC"), to grant him a final release pursuant to R.C. 2967.16 in Cuyahoga County

Court of Common Pleas ("Cuyahoga court") case No. CR-01-405065-ZA ("case No. 405065").

Findings of Fact:

{¶7} 1. On January 11, 2010, relator filed this original action.

{¶8} 2. In his complaint, relator alleges that on July 6, 2004, he was sentenced in case No. 405065 and was thereafter transported to the custody of ODRC on August 26, 2004.

{¶9} 3. Attached to the complaint is a copy of the Cuyahoga court's journal entry dated July 6, 2004 in case No. 405065. The journal entry states that a jury returned verdicts of guilty on counts one, two, and three. As to count one, relator was convicted of drug possession, a violation of R.C. 2925.11, a felony of the fourth degree. As to count two, relator was convicted of preparation of drugs for sale, a violation of R.C. 2925.07, a felony of the fourth degree. As to count three, relator was convicted of possessing criminal tools, a violation of R.C. 2923.24, a felony of the fifth degree. The Cuyahoga court's journal entry states:

Defendant sentenced to 17 months as to counts 1 and 2 and 11 months as to count 3; all counts to run concurrent with each other.

Post release control is part of this prison sentence for the maximum period allowed for the above felony(s) under R.C. 2967.28.

{¶10} 4. According to the complaint, on March 2, 2006, relator moved the Cuyahoga court for jail-time credit in case No. 405065.

{¶11} 5. According to the complaint, on March 9, 2006, the Cuyahoga court granted the motion and ordered the county sheriff to calculate the jail-time credit. A

copy of the Cuyahoga court's entry is attached to the complaint. The entry is dated March 7, 2006 and contains a March 9, 2006 file stamp date.

{¶12} 6. According to the complaint, jail-time credit in case No. 405065 was calculated to be 529 days. (Later in these proceedings, relator submitted a copy of the sheriff's letter dated April 4, 2006, stating that relator had 529 days of jail-time credit in case No. 405065.) (See relator's brief in opposition to respondent's motion for summary judgment.)

{¶13} 7. According to the complaint, relator has written several letters to ODRC's bureau of sentence computation asking for official notification of the termination date of his sentence in case No. 405065.

{¶14} 8. In his complaint, relator invokes R.C. 2967.16 for support of his request for a writ of mandamus ordering respondent to grant him a final release in case No. 405065.

{¶15} 9. On July 1, 2010, respondent moved for summary judgment. In support, respondent submitted an affidavit from Melissa Adams, Chief of the Bureau of Sentence Computation, executed June 22, 2010. In her affidavit, Adams avers that she prepared from ODRC records an attached memorandum regarding relator's sentences.

{¶16} The Adams memorandum, dated March 15, 2010, states:

Thompson was admitted to our department on August 26, 2004. He was sentenced to 3 years gun specification consecutive with 7 years for Felonious Assault, Felony 2, Cuyahoga Case Number CR02418761. Upon admission, the entry was silent to credit so our office applied credit from the day of sentencing (August 18, 2004) through admission for a total of 8 days. He was also sentenced on Cuyahoga Case Number CR01405605 [sic], for the offenses of Possession, Preparation of Drugs, and Possession of Criminal Tools. All offenses were Felony 4s and sentenced to 17 months

concurrent with each other for a total of 17 months with no mention of credit. Credit was applied from the day of sentencing (July 6, 2004) through admission for a total of 51 days. As CR02418761 was silent to this case, the cases were ran concurrent.

Thompson was taken out to court and sentenced to 6 months concurrent on January 19, 2005, for Cuyahoga Case Number CR02431683, Felony 5 Possession of Drugs. No credit was mentioned and none was applied as the out to court dates were during the gun specification Thompson was serving on CR02418761.

On December 21, 2005, an entry was filed on Cuyahoga CR02418761 ordering the sheriff to calculate the jail time credit. Our office received a sheriff's letter dated January 20, 2006 that reflected confinement dates of March 17, 2003 through admission for a total of 528 days for this case. On March 7, 2006, an entry was filed on Cuyahoga CR01405065 ordering the sheriff to calculate credit. The sheriff's letter dated April 4, 2006, indicated confinement dates of April 19, 2001 and March 17, 2003 through admission for a total of 529 days credit for CR01405065.

Inmate Thompson's release date is controlled by the 3 years gun specification consecutive with 7 years on Case CR02418761 reduced by 528 days jail time credit. His calculated gun specification expiration is August 25, 2007, and his Expiration of Stated Term is March 13, 2013.

{¶17} 10. In further support of summary judgment, respondent submitted another affidavit from Adams executed June 22, 2010. This second affidavit states:

1. I have personal knowledge of the facts contained in this affidavit and am competent to testify to matters stated herein.
2. I am employed by the Ohio Department of Rehabilitation and Correction as the Chief of the Bureau of Sentence Computation.
3. My duties include the care and custody of the Ohio Department of Rehabilitation and Correction's inmate records.

4. Ramon A. Thompson, #472-17, is incarcerated at the Lake Erie Correctional Institution and is in the custody of the Ohio Department of Rehabilitation and Correction.
5. Thompson was admitted to the Ohio Department of Rehabilitation and Correction on August 26, 2004 and sentenced to 3 years on a gun specification consecutive with 7 years for felonious assault from a Cuyahoga County conviction, Case No. CR02418761. He was also sentenced to 17 months on a Cuyahoga County conviction, Case No. CR01405065. This sentence was ordered served concurrently with Case No. CR02418761. On January 19, 2005, Thompson was sentenced to an additional concurrent 6 months on Cuyahoga County conviction, Case No. CR02431683. Thompson was later given 528 days of jail time credit.
6. Once an inmate completes his **entire** sentence, he receives a restoration of civil rights form, a post release control reporting order, or parole certificate if appropriate.
7. No notification or documentation is provided to an inmate until his/her entire sentence has expired.
8. Inmate Thompson's stated term of incarceration expires on March 13, 2013 and until that date, he will not receive any notification or documentation from this office.

(Emphasis sic.)

{¶18} 11. On July 2, 2010, the magistrate issued notice that respondent's motion for summary judgment is set for submission to the magistrate on July 26, 2010.

{¶19} 12. On July 19, 2010, relator filed his brief in opposition to the motion for summary judgment.

Conclusions of Law:

{¶20} It is the magistrate's decision that this court grant respondent's motion for summary judgment, as more fully explained below.

{¶21} Summary judgment is appropriate when the movant demonstrates that: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, said party being entitled to have the evidence construed most strongly in his favor. *Turner v. Turner* (1993), 67 Ohio St.3d 337, 339-340; *Bostic v. Connor* (1988), 37 Ohio St.3d 144, 146; *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. The moving party bears the burden of proving no genuine issue of material fact exists. *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112, 115.

{¶22} R.C. 2967.16 provides:

(A) \* \* \* [W]hen a paroled prisoner has faithfully performed the conditions and obligations of the paroled prisoner's parole and has obeyed the rules and regulations adopted by the adult parole authority that apply to the paroled prisoner, the authority upon the recommendation of the superintendent of parole supervision may enter upon its minutes a final release and thereupon shall issue to the paroled prisoner a certificate of final release, but the authority shall not grant a final release earlier than one year after the paroled prisoner is released from the institution on parole \* \* \* .

(B)(1) When a prisoner who has been released under a period of post-release control pursuant to section 2967.28 of the Revised Code has faithfully performed the conditions and obligations of the released prisoner's post-release control sanctions and has obeyed the rules and regulations adopted by the adult parole authority that apply to the released prisoner or has the period of post-release control terminated by a court pursuant to section 2929.141 of the Revised Code, the authority, upon the recommendation of the superintendent of parole supervision, may enter upon its minutes a final release and, upon the entry of the final release, shall issue to the released prisoner a certificate of final release. In the case of a prisoner who has been released under a period of post-release control pursuant to

division (B) of section 2967.28 of the Revised Code, the authority shall not grant a final release earlier than one year after the released prisoner is released from the institution under a period of post-release control. \* \* \*

{¶23} In order for a writ of mandamus to issue, the relator must demonstrate: (1) that he has a clear legal right to the relief prayed for; (2) that the respondent is under a clear legal duty to perform the act requested; and (3) that the relator has no plain and adequate remedy in the ordinary course of law. *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28, 29.

{¶24} In case No. 405065, relator was sentenced on July 6, 2004 to serve 17 months imprisonment for the three offenses. Apparently, he was not immediately transported to the custody of ODRC because, on August 18, 2004, he was sentenced in another criminal case to three years for a gun specification to be served consecutively with seven years for felonious assault. He was then transported to ODRC on August 26, 2004 to serve the sentences imposed in both cases. At the time of his arrival at ODRC, there was no jail-time credit awarded in case No. 405065. Some 18 months after arrival at ODRC, relator moved for jail-time credit and was eventually awarded a credit of 529 days.

{¶25} Relator asserts that his 17 month sentence in case No. 405065 converts to 515 days. Pointing out that he was eventually credited with 529 days of jail-time credit, relator argues that his 17 month sentence was, in effect, already served and thus terminated by the time he arrived at ODRC in August 2004. Based upon this factual scenario, relator claims that respondent has a clear legal duty to provide him a final release in case No. 405065.

{¶26} Relator invokes R.C. 2967.16 to provide him the alleged clear legal right to the relief he prays for, and the alleged clear legal duty that respondent allegedly must perform. But, clearly, relator's reliance upon R.C. 2967.16 is misplaced.

{¶27} R.C. 2967.16(A) applies "when a paroled prisoner has faithfully performed the conditions and obligations of the paroled prisoner's parole." Relator does not allege that he is a paroled prisoner nor that he has faithfully performed the conditions and obligations of parole.

{¶28} R.C. 2967.16(B)(1) applies when a prisoner "has been released under a period of post-release control" and "has faithfully performed the conditions and obligations of the released prisoner's post-release control sanctions." Relator does not allege that he has been released under a period of post-release control nor that he has faithfully performed the conditions of post-release control sanctions.

{¶29} Thus, it is clear that R.C. 2967.16 provides to relator no basis for granting a writ of mandamus.

{¶30} Accordingly, it is the magistrate's decision that this court grant respondent's motion for summary judgment.

*/S/ Kenneth W. Macke*

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KENNETH W. MACKE  
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).