

# 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

JAMES CONWAY

Plaintiff

v.

OHIO STATE PENITENTIARY

Defendant

Case No. 2008-07179-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

## FINDINGS OF FACT

{¶ 1} 1) On or about December 4, 2006, plaintiff, James Conway, an inmate incarcerated at defendant, Ohio State Penitentiary (“OSP”), placed an order with an institutional charitable group for food products as part of a fund raising activity. The order totaled \$11.00, with \$10.00 covering the cost of the food and \$1.00 being set aside as a charitable contribution. On December 7, 2006, defendant withdrew \$11.00 from plaintiff’s inmate account. Plaintiff pointed out the food ordered was scheduled for delivery on December 13, 2006. On December 11, 2006, plaintiff was transferred from the OSP general population to a segregation unit for a purported internal rule violation. When plaintiff’s food order arrived at OSP he was still housed in a segregation unit and consequently, the food was never delivered to him. Plaintiff asserted an OSP staff member, Mr. Resatar destroyed the food order. Plaintiff contended defendant’s employee had no authority to destroy the food and he has therefore filed this complaint seeking to recover damages of \$11.00, the amount withdrawn from his inmate account to pay for the chicken and a charitable contribution. The \$25.00 filing fee was paid and

plaintiff requested reimbursement of that amount along with his damage claim.

{¶ 2} 2) Plaintiff asserted he was wrongfully transferred to segregation based on a mistaken charge and he was subsequently exculpated. Plaintiff submitted a copy of a flier distributed to promote the food sale in May 2008. Plaintiff reported this flier is “similar” to the flier used to promote the food sale he participated in when he ordered food in December 2006. The May 2008 flier bears the printed advisement “ No refunds for inmates in segregation!!!”

{¶ 3} 3) Defendant acknowledged plaintiff ordered food for a fundraiser and \$11.00 was deducted from his inmate account to pay for the food. Defendant further acknowledged plaintiff was transferred to a segregation unit on December 11, 2006 for an institutional rule violation, “horseplay.” Plaintiff remained in segregation until December 18, 2006 and the food he ordered was delivered on December 13, 2006. Defendant asserted plaintiff was ineligible for food delivery or a refund due to his housing assignment at the time the food was available. Defendant explained the sale of fundraiser food items was conditional and plaintiff was ineligible to receive the ordered food when he was housed in a segregation unit. Plaintiff appeared before defendant’s Rules Infraction Board (“RIB”) on December 18, 2006 and plead guilty to a rule violation. For the rule violation the RIB disposition imposed was seven days confinement in a segregation unit. Due to the fact plaintiff was in segregation at the time his food was delivered, the food was forfeited pursuant to the conditions posed on the fundraising flier.

{¶ 4} 4) Plaintiff filed a response contending defendant acted improperly in transferring him to segregation on December 11, 2006 and thereby preventing him from receiving delivery of the ordered food. Plaintiff related his complaint is “based on nonperformance of the sales contract” between him and defendant.

#### CONCLUSIONS OF LAW

{¶ 5} 1) Prison regulations contained in the Ohio Administrative Code, “are primarily 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 that plaintiff alleges that employees of defendant have failed to comply with internal regulations and the Ohio Administrative Code, he fails to state a claim for relief.

{¶ 6} 2) Alternatively, considering defendant’s acts could be construed as a wrongful collection of plaintiff’s funds, plaintiff could still not prevail. Plaintiff is seeking to recover funds he asserted were wrongfully withheld; the funds sought for recovery represent a claim for equitable relief and not money damages. Consequently, this court at the Administrative Determination level has no jurisdiction over claims grounded in equity based on the wrongful collection of funds from an inmate account. See *Flanagan v. Ohio Victims of Crime Fund*, Ct. of Cl. No. 2003-01893-AD, 2004-Ohio-1842; also *Blake v. Ohio Attorney General’s Office*, Ct. of Cl. No. 2004-06089-AD, 2004-Ohio-5420; and *Johnson v. Trumbull Corr. Inst.*, Ct. of Cl. No. 2004-08375-AD, jud, 2005-Ohio-1241; *Norman v. Ohio Dept. of Rehab. and Corr.* (2008), Ct. of Cl. No. 2007-09283-AD. Plaintiff’s claim regarding the withdrawal of \$11.00 from his inmate account.

{¶ 7} 3) Plaintiff’s claim is denied regarding the issue of a refund for the purchase price of the food. When plaintiff purchased the food he agreed to the terms and conditions of purchase which required his physical presence to accept delivery. Plaintiff’s lack of knowledge of the conditions for delivery is irrelevant to the issue of liability. Plaintiff failed to satisfy the condition of the purchase and has consequently waived the right to any refund of payment or receipt of the products purchased. See *Bradsher v. Ohio Department of Rehabilitation and Correction*, Ct. of Cl. No. 2003-04627-AD, 2003-Ohio-4490; *Thomas v. Warren Correctional Inst.*, Ct. of Cl. No. 2005-07224-AD, 2005-Ohio-6586; *Price v. Dept. of Rehab. and Corr.*, Ct. of Cl. No. 2006-01017-AD, 2006-Ohio-7158.

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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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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RDK/laa  
1/5  
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