

Court of Claims of Ohio

The Ohio Judicial Center
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ANDREW DUNN

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2008-07772

Judge Joseph T. Clark
Magistrate Steven A. Larson

ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶ 1} On August 20, 2008, plaintiff filed a motion for judgment on the pleadings pursuant to Civ.R. 12(C) or, in the alternative, a motion for summary judgment pursuant to Civ.R. 56(A). On September 3, 2008, defendant filed a cross-motion for summary judgment pursuant to Civ.R. 56(B) and a memorandum contra plaintiff's motion for judgment on the pleadings. On September 18, 2008, plaintiff filed a response. The motions are now before the court on a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶ 2} Civ.R. 56(C) states, in part, as follows:

{¶ 3} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that 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, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." See also *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the North Central Correctional Institution pursuant to R.C. 5120.16. Plaintiff alleges that he is incarcerated pursuant to a void judgment entry and that defendant is therefore liable for false imprisonment. Defendant argues that plaintiff is imprisoned pursuant to a valid judgment entry from the Delaware County Court of Common Pleas.

{¶ 5} 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, 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.

{¶ 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), 94 Ohio App.3d 315, 318. 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 appear that such judgment or order is void." *Bennett*, supra, at 111, quoting *Diehl v. Friester* (1882), 37 Ohio St. 473, 475.

{¶ 7} The Supreme Court of Ohio held that "the judgment of conviction is a single document that need not necessarily include the plea entered at arraignment, but that it must include the sentence and the means of conviction, whether by plea, verdict,

or finding by the court, to be a final appealable order under R.C. 2505.02.” *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, ¶ 17. Plaintiff argues that his conviction and sentencing entries from the Delaware County Court of Common Pleas do not meet the requirements set forth in *Baker*.

{¶ 8} However, the proper remedy when confronted with a sentencing entry that does not meet the requirements set forth in *Baker* is to petition the trial court for a revised sentencing entry. *Dunn v. Smith*, 119 Ohio St.3d 364, 2008-Ohio-4565, ¶ 9. Moreover, this court has held that a plaintiff who has had the opportunity to appeal his conviction cannot substitute an action in the Court of Claims for a right of appeal in a different court. *Hardy v. Belmont Corr. Inst.*, Ct. of Cl. No. 2004-09631, 2006-Ohio-623, ¶ 24, citing *Swaney v. Bur. of Workers’ Comp.* (Nov. 10, 1998), Franklin App. No. 98AP-299, and *Midland Ross Corp. v. Indus. Comm.* (1992), 63 Ohio Misc.2d 311. “R.C. 2743.02 does not embrace jurisdiction to review criminal proceedings occurring in courts of common pleas.” *Donaldson v. Court of Claims of Ohio* (May 19, 1992), Franklin App. No. 91AP-1218; see also *Troutman v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 03AP-1240, 2005-Ohio-334, ¶ 10. Accordingly, this court lacks authority to determine whether the entries in question comply with *Baker*.

{¶ 9} In support of its motion for summary judgment, defendant provided certified copies of the journal entries from plaintiff’s criminal case in the Delaware County Court of Common Pleas. Those documents show the following: on April 6, 2007, a Delaware County Grand Jury indicted plaintiff on two counts of receiving stolen property and two counts of identity fraud (Exhibit A); on September 17, 2007, plaintiff pleaded guilty to the indictment (Exhibit B); on October 22, 2007, plaintiff was sentenced to serve nine months in prison for each of the receiving stolen property convictions, to be served consecutively, and nine months in prison for each of the identity fraud convictions, to be served concurrently with the receiving stolen property convictions. (Exhibit C.)

{¶ 10} Upon review of the certified journal entries upon which defendant relies, the court finds that they do not “appear void” and, therefore, that defendant has a privilege justifying plaintiff’s incarceration. As a result, the court finds that defendant is entitled to judgment as a matter of law. Accordingly, plaintiff’s motion for judgment on the pleadings or motion for summary judgment is DENIED. Defendant’s motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

JOSEPH T. CLARK
Judge

cc:

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