

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

CHARLES LIPSCOMB

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2009-01662-AD

Clerk Miles C. Durfey

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On December 30, 2008, plaintiff, Charles Lipscomb, an inmate incarcerated at defendant's Southern Ohio Correctional Facility (SOCF), was issued a "Conduct Report" for institutional rule violations of fighting and disobedience of a direct order. During the course of the fight, a mobile cell phone assigned to the cell block area was destroyed.

{¶ 2} 2) Plaintiff appeared before defendant's Rule Infraction Board (RIB) to answer the charged issued in the "Conduct Report." The RIB found plaintiff guilty of fighting and disobedience of a direct order and ordered him to pay one-half of the value of the broken cell phone.

{¶ 3} 3) Plaintiff contended that defendant had no authority to collect funds from his inmate account to pay for the broken cell phone. Plaintiff filed this complaint seeking to recover \$390.00, the amount of money he was ordered to pay and the total amount being collected from his account at SOCF. Payment of the filing fee was waived.

{¶ 4} 4) Defendant denied liability asserting that this court has no jurisdiction to review decisions made by the RIB. See *Saxton v. Ohio Dept. of Rehab. & Corr.* (1992), 80 Ohio App. 3d 389, 609 N.E. 2d 245.

{¶ 5} 5) Plaintiff filed a response relating that he did not break a cell phone during the course of a fight with another inmate on December 30, 2008. Plaintiff contended that his constitutional rights are being violated by the act of SOCF staff wrongfully collecting money from his inmate account. Plaintiff, stated that, "I'm not getting my due process."

CONCLUSIONS OF LAW

{¶ 6} 1) The Supreme Court of Ohio has held that "[t]he language in R.C. 2743.02 that 'the state' shall 'have its liability determined *** in accordance with the same rules of law applicable to suits between private parties ***' means that the state cannot be sued for its legislative or judicial functions or the exercise of an executive or planning function involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion." *Reynolds v. State* (1984), 14 Ohio St. 3d 68, 70, 14 OBR 506, 471 N.E. 2d 776; see also *Von Hoene v. State* (1985), 20 Ohio App. 3d 363, 364, 20 OBR 467, 486 N.E. 2d 868. Prison administrators are provided "wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institution security." *Bell v. Wolfish* (1979), 441 U.S. 520, 547, 99 S. Ct. 1861, 60 L. Ed. 2d 47.

{¶ 7} 2) Prison regulations, including those 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. 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 OSP staff failed to comply with internal prison regulations and the Ohio Administrative Code, he fails to state claim for relief.

{¶ 8} 3) 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. 2003-08193-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.

{¶ 9} 4) Any claim based on deprivation of constitutional rights is denied. This court lacks subject matter jurisdiction over alleged violations of constitution rights and alleged violations under Section 1983, Title 42, U.S. Code. See e.g., *Jett v. Dallas Indep. School Dist.* (1989), 491 U.S. 701, 109 S. Ct. 2702, 105 L. Ed 2d 598; *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App. 3d 170, 528 N.E. 2d 607; *Gersper v. Ohio Dept. of Hwy. Safety* (1994), 95 Ohio App. 3d 1, 641 N.E. 2d 1113. Any constitutional violation claim or claim of federal civil rights violation is not cognizable. See *Howard v. Supreme Court of Ohio*, Franklin App. No. 94AP-1093, 2005-Ohio-2130; *Wright v. Dept. of Rehab. & Corr.* (March 28, 1995), Franklin App. No. 94AP108-1169.

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

CHARLES LIPSCOMB

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2009-01662-AD

Clerk Miles C. Durfey

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.

MILES C. DURFEY
Clerk

Entry cc:

Charles Lipscomb, #485-135
P.O. Box 45699
Lucasville, Ohio 45699

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
770 West Broad Street
Columbus, Ohio 43222

RDK/laa
5/13
Filed 6/17/09
Sent to S.C. reporter 10/9/09