

[Cite as *Gibbs v. Ross Correctional Inst.*, 2005-Ohio-6281.]

IN THE COURT OF CLAIMS OF OHIO

DERRICK GIBBS :
Plaintiff :
v. : CASE NO. 2005-07925-AD
ROSS CORRECTIONAL INST. : ENTRY OF DISMISSAL
Defendant :

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{¶ 1} On June 30, 2005, plaintiff filed a complaint against defendant, Ross Correctional Institution. Plaintiff alleges on May 4, 2005, his radio was confiscated by defendant as the result of a conduct report. Plaintiff asserts when the radio was confiscated it was damaged by one of defendant's agents. As a result of the confiscation, plaintiff was ordered to send the radio home. Plaintiff seeks damages in the amount of \$73.00 for the radio, postage incurred to send the radio home, and reimbursement of the \$25.00 filing fee which plaintiff submitted on July 8, 2005.

{¶ 2} On September 2, 2005, defendant filed a motion to dismiss. Defendant asserts plaintiff's claim should be dismissed pursuant to Civ. 12, lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. Defendant asserts plaintiff by filing this action is seeking to appeal the decision of the hearing officer relating to the finding that his radio was contraband and should be sent home. Furthermore, defendant contends plaintiff has no right to assert a claim for contraband property he has no right to possess.

{¶ 3} On September 14, 2005, plaintiff filed a response to

defendant's motion to dismiss, however, he did not serve this motion on defendant and the motion contained no certificate of service as required by Civ. R. 5. Accordingly, plaintiff's response is stricken.

{¶ 4} Evidence in the claim file reveals plaintiff was found guilty of a rule 21 violation, disobedience of a direct order by a hearing officer on May 10, 2005. The hearing officer ordered the radio to be sent home at plaintiff's expense. Plaintiff was given the right to appeal this report. There is no evidence plaintiff appealed the decision of the hearing officer to the Rules Infraction Board. Also, defendant conducted an investigation and concluded the radio was not damaged prior to being sent home, only the back cover was missing.

{¶ 5} The basis of plaintiff's case is an appeal of the decision rendered by the hearing officer with respect to his radio. Plaintiff should have sought recourse with an appeal to the Rules Infraction Board not this court. "No redress can be given where plaintiff, of his own violation, failed to exhaust his administrative remedies." *Foy v. Department of Rehabilitation and Correction* (1985), 85-01732-AD. Assuming arguendo that plaintiff appealed to the Rules Infraction Board, such an appeal does not relate to civil law. *Maynard v. Jago* (1977), 76-0581-AD. Accordingly, this court does not have jurisdiction over the decisions of the Rules Infraction Board. *Chatman v. Dept. of Rehabilitation and Correction* (1985), 84-06323-AD; *Ryan v. Chillicothe Institution* (1981), 81-05181-AD; *Rierson v. Department of Rehabilitation* (1981), 80-00860-AD.

{¶ 6} Having considered all the evidence in the claim file and, for the reasons set forth above, defendant's motion to dismiss is

GRANTED. Plaintiff's case is DISMISSED. The court shall absorb the court costs of this case. The clerk shall serve upon all parties notice of this entry of dismissal and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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