

[Cite as *Hess v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-7112.]

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

DAVID W. HESS

Plaintiff

v.

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

Case No. 2004-09576

Judge Joseph T. Clark

DECISION

{¶1} Plaintiff brought this action alleging a claim of false imprisonment. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} On December 4, 2002, the Cuyahoga County Court of Common Pleas sentenced plaintiff to a term of 12 months of confinement at Lorain Correctional Institution (LorCI) for menacing by stalking, and to a concurrent term of six months for telecommunications harassment. The court's sentencing entry states that plaintiff was to receive seven days of jail-time credit. (Plaintiff's Exhibit A.)

{¶3} On December 12, 2002, plaintiff was transported to LorCI. On June 24, 2003, the sentencing court issued a journal entry granting plaintiff's motion for 19 days of jail-time credit. (Plaintiff's Exhibit A.)

{¶4} On August 11, 2003, plaintiff was returned to the county jail to await re-sentencing by the court of common pleas pursuant to an order from the court of appeals. (Defendant's Exhibit 5.) On October 1, 2003, plaintiff was re-sentenced to LorCI for a term of one year with credit for time served. (Defendant's Exhibit 4.)

{¶5} On November 18, 2003, plaintiff sent multiple written requests or "kites" to the records office at LorCI regarding his release. In the kites, plaintiff stated that he should be released on November 22, 2003, not November 27, 2003.

{¶6} On November 20, 2003, the sentencing court issued an entry denying plaintiff's motion for an expedient ruling of jail-time credit. The entry stated that plaintiff had been granted four days of jail-time credit at sentencing and 19 days of additional jail-time credit on June 24, 2003. A certified copy of the entry was filed at the Bureau of Sentence Computation (BSC) on December 16, 2003. (Defendant's Exhibit 3.) However, plaintiff had been released from defendant's custody on November 27, 2003.

{¶7} Plaintiff asserts that defendant is liable for false imprisonment because it improperly held him in custody beyond his lawful term of imprisonment. Defendant maintains that it properly calculated the date of plaintiff's release pursuant to the October 1, 2003, re-sentencing entry.

{¶8} "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 &

Case No. 2004-09576	- 3 -	DECISION
---------------------	-------	----------

James, *The Law of Torts* (1956), 226, Section 3.7.” *Bennett v. Ohio Dept. of Rehab. and Corr.* (1991), 60 Ohio St.3d 107, 109.

{¶9} 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. and 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.

{¶10} Plaintiff testified that, during his incarceration, he worked as a clerk and was able to monitor his “out date” on the computer. Plaintiff stated that his out date changed from November 27 to November 22 and then again to November 27, 2003. Plaintiff stated that he wrote to “everybody [he] could” to notify defendant that his release date had been miscalculated.

{¶11} Melissa Adams testified that she was the assistant chief of BSC. Adams explained that every sentence computation is reviewed by three staff members before it is certified. Adams also testified that BSC cannot change an inmate’s date of release without a certified copy of a valid journal entry from the sentencing court.

{¶12} Adams testified that plaintiff’s first day at LorCI was December 12, 2002. According to Adams, after consideration of the seven days of conveyance time and the additional seven days of jail-time credit from the sentencing entry, November 27, 2003, became the date of plaintiff’s release. After the June 24, 2003, order granted plaintiff 19 days of jail-time credit, plaintiff’s sentence was recalculated and that date was changed to November 22, 2003.

Case No. 2004-09576	- 4 -	DECISION
---------------------	-------	----------

{¶13} Adams explained that on October 1, 2003, when plaintiff was re-sentenced to a term of one year with “credit for time served,” BSC was required to use the documentation as set forth in the sheriff’s letter to calculate the date of plaintiff’s release. Adams explained that the sheriff’s letter¹ showed that plaintiff had 293 days of credit for December 12, 2002, up to and including September 30, 2003, and listed the following days for conveyance or transport time: May 9, 2002; November 18-22, 2002; December 4-11, 2002, and October 1-8, 2003, for a total of 21 days. This calculation resulted in 314 days of jail-time credit, and a November 27, 2003, date of release.

{¶14} Based upon the evidence presented at trial, the court finds that plaintiff has failed to prove that defendant had knowledge that the privilege initially justifying his confinement no longer existed prior to November 27, 2003. The court finds that defendant did not receive a certified copy of the November 20, 2003, journal entry until December 16, 2003, and that defendant was under a legal obligation to confine plaintiff until it received such entry. Therefore, the court finds that plaintiff has failed to prove his case by a preponderance of the evidence and accordingly, judgment shall be rendered in favor of defendant.

¹Although Adams testified regarding the information contained in the sheriff’s letter, the letter was not offered as an exhibit at trial.



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

DAVID W. HESS

Case No. 2004-09576

Plaintiff

Judge Joseph T. Clark

v.

JUDGMENT ENTRY

DEPARTMENT OF REHABILITATION
 AND CORRECTION

Defendant

This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, 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:

David W. Hess P.O. Box 651 Cedar Bluff, Virginia 24609		
Stephanie D. Pestello-Sharf Assistant Attorney General 150 East Gay Street, 23rd Floor Columbus, Ohio 43215-3130		
HTS/cmd		

Filed December 20, 2006
 To S.C. reporter January 22, 2007