

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

JERRY WELLS

Plaintiff

v.

DEPT. OF REHAB. AND COR.

Defendant

Case No. 2009-02448-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Jerry Wells, an inmate incarcerated at defendant's Warren Correctional Institution ("WCI"), asserted fifteen packs of cigars were confiscated from him by WCI employee, Officer Chamberlin, during the course of a shakedown search on January 14, 2009. Plaintiff related he was told by Officer Chamberlin that the cigars were seized due to the fact, "I had an excessive amount of tobacco." Plaintiff maintained he did not possess an excessive amount of tobacco at the time his cigars were confiscated.

{¶ 2} 2) Plaintiff contended WCI staff confiscated and subsequently destroyed his cigars without proper authority, consequently, plaintiff filed this complaint seeking to recover \$43.35, the stated replacement cost of fifteen packs of cigars. Payment of the filing fee was waived.

{¶ 3} 3) Defendant acknowledged fifteen packs of cigars were seized from plaintiff's possession and declared contraband. Defendant explained the cigars were confiscated because plaintiff could not produce a commissary receipt for the tobacco products and conclusively prove ownership of the items. Defendant argued plaintiff has

no right to pursue a claim for confiscated property that he cannot prove he owned. Defendant submitted a copy of a “Conduct Report” issued to plaintiff on January 14, 2009 for possession of contraband (fifteen packs of cigars). It is noted in the “Conduct Report” that plaintiff could not produce a commissary receipt for the cigars. Plaintiff was subsequently found guilty of possession of contraband.

{¶ 4} 4) Plaintiff filed a response pointing out that defendant’s internal rules and policies do not require inmates to retain receipts for purchases made from the institution commissary. Plaintiff also pointed out the confiscated cigars did not meet the definition of contraband under defendant’s internal rules. Plaintiff asserted he rightfully owned the seized property.

CONCLUSIONS OF LAW

{¶ 5} 1) 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. Larkins v. Wilkinson*, 79 Ohio St. 3d 477, 479, 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 DRC somehow violated internal prison regulations and the Ohio Administrative Code, he fails to state a claim for relief.

{¶ 6} 2) This court has previously held that property in an inmate’s possession which cannot be validated by proper indicia of ownership is contraband and consequently, no recovery is permitted when such property is confiscated. *Wheaton v. Department of Rehabilitation and Correction* (1988), 88-04899-AD.

{¶ 7} 3) Plaintiff has no right to pursue a claim for destroyed property in which he cannot prove any right of ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD. Defendant cannot be held liable for contraband property that plaintiff has no right to possess. *Beaverson v. Department of Rehabilitation and Correction* (1988), 87-02540-AD; *Radford v. Department of Rehabilitation and Correction* (1985), 84-09071.

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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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
6/25
Filed 7/23/09
Sent to S.C. reporter 12/4/09