

HORACE JONES,	)	
	)	
Plaintiff/Appellant,	)	
	)	Davidson Chancery
	)	No. 95-2112-III
VS.	)	
	)	Appeal No.
	)	01-A-01-9603-CH-00102
STATE OF TENNESSEE, ET AL,	)	
DONAL CAMPBELL,	)	
	)	
Defendant/Appellee.	)	

<p><b>FILED</b></p> <p><b>June 19, 1996</b></p> <p><b>Cecil W. Crowson</b>  <b>Appellate Court Clerk</b></p>
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IN THE COURT OF APPEALS OF TENNESSEE  
MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CHANCERY COURT OF DAVIDSON COUNTY  
AT NASHVILLE, TENNESSEE

HONORABLE ROBERT S. BRANDT, CHANCELLOR

HORACE JONES #82141  
CCCCF  
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PLAINTIFF/APPELLANT/PRO SE

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FOR DEFENDANT/APPELLEE

AFFIRMED AND REMANDED

HENRY F. TODD  
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:  
SAMUEL L. LEWIS, JUDGE  
BEN H. CANTRELL, JUDGE

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OPINION

The captioned plaintiff has appealed from the judgment of the Trial Court dismissing his “Petition for Writ of Certiorari.”

The petition states that petitioner is in the custody of the Tennessee Department of Correction, and that Donal Campbell is the Commissioner of that department. The remainder of the petition is a melange of disconnected and confusing statements and demands, including:

STATEMENT OF FACTS

4. On April 17th 1995. Plaintiff was scheduled to be reclassified for possible placement of minimum direct status, plaintiff’s CAF score is (6) six dated April 17th 1995. Plaintiff’s custody level is presently minimum restricted. Plaintiff has maintained this custody level since May 22nd 1991. IRC Pam Nimmo notified plaintiff that he was within the required time span necessary to make the transition to minimum direct security status, after several meetings with IRC Pam Nimmo, plaintiff was informed that he could not be placed on minimum direct status according to John Dennison “stating that plaintiff had a non-processed sentence pending, this is totally erroneous information, the plaintiff received a three year sentence in 1983, in which has been processed and computed to plaintiff life sentence, making this one sentence. On May 25th 1995. Plaintiff filed a declaratory order to defendant Donal Campbell and this petition was denied on as of July 3rd, 1995, I have not heard anything from my declaratory order which I filed to the Commissioner of Department of Corrections which has been over (33) days.

GROUND(S) FOR DAMAGES

5. Respondent(s) in their actions and omissions cause a prejudicial affect:

1. That respondent cause plaintiff the opportunity to enjoy the privilege of minimum direct custody level when his CAF scores was low enough to be eligibility.

2. That respondent's correctional counselor violated T.D.O.C. Policy 401.05(V),(VI)(D) page 1 of 4. When she failed to ensure that the accurate completion of the custody assessment from (tomis) (LCLV) and denied the plaintiff the opportunity to be reviewed by the classification panel to make their own determination.

3. That respondent correctional counselor violated T.D.O.C. Policy 401.08. Page 1 of 5(D), 2. When she attempted to force plaintiff to sign classification summary sheet documenting that he was present at a hearing and was advised of her recommendation thus, denying plaintiff the opportunity to appear before the classification hearing panel.

The petition seeks the following relief:

RELIEF

7. 1. That this Honorable Court grant a hearing on this civil rights violation set this matter for trial by jury.
2. That plaintiff be granted the privilege to receive minimum direct security status in which he is so entitled to.
3. That plaintiff be awarded damages from each defendant that's named in this complaint Donal Campbell, Pam Nimmo, John Dennison compensatory and punitive.
4. Award plaintiff (\$10,000.00) Ten Thousand Dollars in compensatory damages.
5. Award plaintiff (\$10,000.00) Ten Thousand Dollars in punitive damages.
6. Plaintiff is seeking damages for his emotional suffering from the violation of policies, practice, and omissions from these defendants.

On September 14, 1995, Donal Campbell filed a motion to dismiss as follows:

The respondent, by and through the office of the Tennessee Attorney General, moves the Court to dismiss the petition in this case pursuant to Rule 12.02 of the Tennessee Rules of Civil Procedure, on the ground that it fails to state a claim upon which relief can be granted.

In support of this motion, the respondent relies upon the affidavit of Candace Whisman, Sentence Technician, Department of Correction Sentence Information Services, and the memorandum of law filed with this motion.

The affidavit attached to said motion read as follows:

. . . Horace Jones was originally admitted to the Tennessee Department of Correction on October 11, 1977, with a total 3 years to 6 year sentence from Shelby County, Tennessee.

These cases were #B45886, #B52655, #B53844 and #B58346. On July 12, 1978, he was paroled on these sentences.

He was returned to the Tennessee Department of Correction as a parole violator on June 27, 1980. He had been sentenced in Shelby County, Tennessee on December 3, 1979, in Case B# 66050 and received a life sentence. The Tennessee Board of Paroles ordered this sentence to begin on date imposed of December 3, 1979. The court awarded 334 days of pretrial jail credit for a sentence effective date of January 3, 1979.

On July 29, 1983, he committed the offense of Malicious Stabbing while incarcerated in a Department of Correction facility. He was sentenced October 11, 1983, in Lauderdale County, Tennessee, case #4865 and received a three year sentence to be served consecutively to his prior sentence.

The life sentence in Case #B66050 has a Probationary Parole Date January 20, 2005. The three year sentence in Case #4865 is being held in abeyance until such time as the Board of Paroles recommends him for Custodial Parole in compliance with Howell vs. State. He will be eligible for a Custodial Parole hearing when he reaches the Probationary Parole Date on the life sentence. His sentences do not fall under the guidelines of Slagle vs. Reynolds.

On October 24, 1995, the Trial Court entered the following order:

The petitioner has filed a petition for writ of certiorari in which he challenges the calculation of his prison sentence. From the papers filed by the respondent in support for the motion to dismiss it appears that the petitioner's prison sentence has been correctly calculated. Accordingly, the petitioner's suit is dismissed at the petitioner's costs.

On appeal, plaintiff presents only one issue, as follows:

Whether the lower court erred in concluding that petitioner's prison sentence has been correctly calculated?

TRCP Rule 12.02 provides in part:

**How Presented.** - . . . If, on a motion asserting the defense numbered (6) to dismiss for failure to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

TRCP Rule 56.03 provides:

**Motion and Proceedings Thereon.** - The motion shall be served at least thirty (30) days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

The defendant's motion was served upon the plaintiff on September 14, 1995. On September 28, 1995, plaintiff filed "Petitioner's Objections to Respondent's Motion to Dismiss" in which it is asserted that there is a material issue of fact. Attached to said pleading was plaintiff's affidavit stating:

. . . 2. That I originally filed a declaratory order with the Department of Correction for improper sentence calculation and discrimination, and I received the response from them in which is marked as EXHIBIT -2- attached to my objections to dismissal.

3. That I have moved for discovery from respondents to prove the allegation that I am being discriminated against by respondents refusal to calculate my pending (3) year sentence wherein no other prisoner in the State of Tennessee Prison System pending sentence(s) are being held in abeyance until the parole board determines they are ready for custodial parole because the parole board does not certify prisoners for parole, the Department of Corrections certifies prisoners for parole. The respondents have a sentencing calculation procedure that is being applied to all other prisoners in the State Prison System except petitioner.

Attached to said affidavit is a letter from the Department to plaintiff stating:

This is to advise you that the Commissioner's office received your April 18, 1995, letter concerning classification to **minimum direct**, and forwarded the letter to this office for response.

The classification coordinator is not incorrect in refusing to reclass you to **minimum direct**. Your parole date on your life sentence is not your earliest release date since you can possibly be paroled on that date, but not released, when you are custodially paroled to your unprocessed sentence. At this time, there is no way of knowing when that will occur. This, therefore, makes you ineligible for annex or CSC placement which may require minimum direct custody.

While the affidavit of plaintiff is relevant to some of the allegations of the complaint, it does not address the factual statements of the defendant's supporting affidavit, to which no contradictory evidence was submitted by plaintiff. No request for additional time to file such evidence was filed. Summary judgment was entered on October 24, 1995, more than 30 days after service of defendant's motion. Therefore, judgment was entered in accordance with the procedure required by Rule 56.

When a moving party has made a properly supported motion for summary judgment, the burden of production of evidence shifts to the non-moving party to produce evidence which would produce a genuine factual dispute. *Braswell v. Caruthers*, Tenn. App. 1993, 863 S.W.2d 722.

By failure to produce contradictory evidence, plaintiff subjected his suit to summary dismissal.

The consideration of this appeal has been limited to the single issue presented by plaintiff.

The judgment of the Trial Court is affirmed. Costs of this appeal are taxed against the plaintiff. The cause is remanded to the Trial Court for necessary further proceedings.

Affirmed and Remanded.

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HENRY F. TODD  
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

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SAMUEL L. LEWIS, JUDGE

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BEN H. CANTRELL, JUDGE