

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Herbert Alonzo Robinson,

Plaintiff,

Versus

Sheriff Al Cannon,

Defendant.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) C/A No. 12-CP-10-0929

) ORDER GRANTING DEFENDANT'S
) MOTION FOR SUMMARY JUDGMENT

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JUN 14 2013

SC Court of Appeals

FILED
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BY JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before the Court on May 14, 2013, for a hearing on Defendant Sheriff Al Cannon's Motion for Summary Judgment. Present at the hearing were the Plaintiff, appearing *pro se*, and G. Wade Cooper, Esq. appearing on behalf of Defendant. Following oral argument from both parties and their counsel, and for the following reasons, the Defendant's Motion is **GRANTED**, Plaintiff's Complaint is **DISMISSED WITH PREJUDICE**, and Judgment is to be entered on behalf of the Defendant in this matter.

Plaintiff, a *pro se* inmate in the custody of the South Carolina Department of Corrections, filed this action in Charleston County alleging negligence on the part of the Defendant, as caretaker of the Charleston County Detention Center, while he was a pre-trial detainee at the Detention Center (CCDC). Essentially, he claims that on August 12, 2011, employees of the Defendant breached their duty to him as a pre-trial detainee as certain employees at the facility seized "70% of his property" from his cell. Plaintiff alleges that the seized material contained his legal documents, the seizure of which he further alleges gave him no other choice but to plead guilty to the criminal charges of burglary. Plaintiff is currently serving a fifteen year sentence in the Department of Corrections.

Defendant filed a motion for summary judgment pursuant to SCRCP 56, arguing that certain of the South Carolina Tort Claims Act's exceptions to the State's waiver of immunity applied to the facts in this case, and, as such, the Defendant was not liable for any loss alleged to have been sustained by the Plaintiff. In support of Defendant's motion, he submitted the affidavit

of Sgt. Jill Wilson, the employee Plaintiff alleges supervised and authorized the removal of the paperwork from his cell. Defendant also submitted Charleston County Detention Center Policy 4215.1, which prohibits inmates from possessing personal property of other inmates, including but not limited to legal material, social security numbers, mug shots, etc.

The Court finds and Plaintiff concedes that the two employees responsible for the removal of his paperwork from his cell were employees of a governmental entity acting within the course and scope of their duties as defined under the South Carolina Tort Claims Act S.C. Code Ann. §15-78-30. Plaintiff sues Sheriff Al Cannon in his official capacity as caretaker of the detention center and its employees. Under South Carolina law, Defendant Cannon, as Sheriff of Charleston County, is considered an "arm of the state." *Cone v. Nettles*, 308 S.C. 109, 417 S.E.2d 523 (1992), adopting the District Court's holding in *Gulledge v. Smart* 691 F.Supp. 947 (D.S.C. 1988) (holding that South Carolina sheriffs are state officials for Eleventh Amendment purposes), *aff'd mem.*, 878 F.2d 379 (4th Cir. 1989).

gm
The Tort Claims Act constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. S.C. Code Ann. § 15-78-70. Defendant argues that he is not liable for a loss resulting from adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies. S.C. Code Ann. § 15-78-60 (5). As set forth in the Affidavit of Sgt. Jill Wilson, during the search of his cell on August 12, 2011, Plaintiff was found to be in possession of excessive paperwork, including material that belonged to other inmates. As presented to the Court, the Detention Center has a written policy that prohibits inmates from possessing personal property of other inmates, including but not limited to legal material, social security numbers, mug shots, etc. As such, the Court finds that the confiscation of this prohibited material was done as enforcement of and compliance with the

written rule/regulation/policy of the Defendant. Therefore, the Court finds as a matter of law that the Defendant is not liable for any resulting loss alleged by Plaintiff.

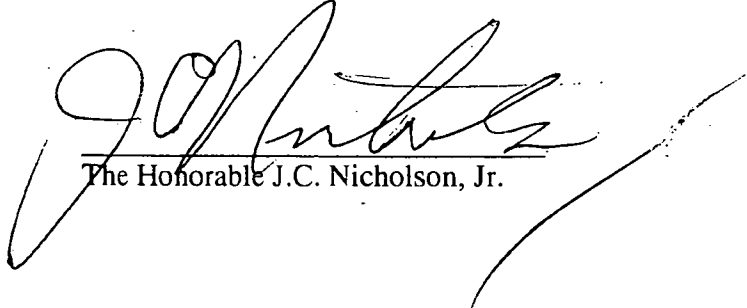
Defendant next argues that he is not liable for a loss resulting from the exercise of discretion or judgment by the governmental entity. S.C. Code Ann. § 15-78-60 (5). Sgt. Wilson attests that she used her discretion as an officer in removal of the material, but also in allowing Plaintiff the opportunity to retrieve from the mass of paperwork that which belonged to him. She attests that she also used her training as the facility's fire marshal to determine that the excess of paperwork strewn through Plaintiff's cell constituted a potential fire hazard. Additionally, Sgt. Wilson used her discretion as an officer in not charging Plaintiff for the violation, as the offending material had been removed. Accordingly, the Court finds the Defendant is not liable for any loss resulting from the exercise of discretion or judgment as demonstrated by Sgt. Wilson.

gm
Finally, Defendant argues that he is not liable for a loss resulting from regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety. S.C. Code Ann. § 15-78-60 (13). Based upon the material submitted for review, including the Affidavit of Sgt. Wilson and the Incident Report, the Court finds that the removal of Plaintiff's excess paperwork was done in the course of and as the result of a regular Unit inspection and was done for the purpose of determining whether the cell was in compliance with written policies, as well as to determine whether the cell contained a hazard to health or safety. Therefore, pursuant to the express terms of the Tort Claims Act, the Defendant is not liable for any resulting loss alleged by Plaintiff.

S.C. Code Ann. §15-78-20(f) and 15-78-200 both mandate that the provisions of the Tort Claims act, "must be liberally construed in favor of limiting liability of the State." For the foregoing reasons, Plaintiff's Complaint in this matter is hereby **DISMISSED and SUMMARY JUDGMENT GRANTED** as to the Defendant, Sheriff Al Cannon.

IT IS SO ORDERED!

5/28, 2013
Charleston, South Carolina



The Honorable J.C. Nicholson, Jr.

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