

**THIRD DIVISION  
DILLARD, P. J.,  
GOBEIL and HODGES, JJ.**

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**September 24, 2019**

**NOT TO BE OFFICIALLY  
REPORTED**

**In the Court of Appeals of Georgia**

**A19A0798. ROSE v. GEORGIA DEPARTMENT OF HO-028  
CORRECTIONS.**

HODGES, Judge.

Kevin Rose appeals the dismissal of his suit against the Georgia Department of Corrections (the "Department"). For the reasons that follow, we affirm the trial court's dismissal.

"We review the trial court's ruling on a motion to dismiss under the de novo standard of review." (Citation omitted.) *Watson v. Ga. Dept. of Corrections*, 285 Ga. App. 143 (645 SE2d 629) (2007). So viewed, the record shows that in 2011 Rose pled guilty to possession of methamphetamine and was sentenced as follows:

WHEREAS, the above-named defendant has been found guilty of the above-state[d] offense, WHEREUPON, It is ordered and adjudged by the Court that the said defendant is hereby sentenced to confinement for a period of

**10 years**

in the State Penal System or such other institution as the Commissioner of the Georgia Department of Corrections or Court may direct, to be computed as provided by law; **however, that said sentence is suspended upon the defendant serving 2 years in confinement pursuant to 17-10-7(c) and remaining outside Whitfield County, Georgia and Murray County, Georgia.**

(Emphasis in original.) In 2014, Rose visited his family in Whitfield County and was arrested for violating his 2011 sentence. His suspended sentence was subsequently revoked based on the violation, and the trial court issued the following sentence: “Defendant is hereby ordered to serve the balance of the original sentence of 10 years suspended upon service of two years and banishment from the Conasauga Judicial Circuit.”<sup>1</sup> According to Rose, because he only violated a general term of his probation, the maximum period of incarceration for which he could be sentenced was two years. See OCGA § 42-8-34.1 (c). The Department, however, “computed Rose’s sentence as requiring him to serve 2,320 days – well over two years.”

On April 20, 2018, Rose sued the Department and a number of individual defendants under the Georgia Tort Claims Act (OCGA § 50-12-20 et seq.) and 42

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<sup>1</sup> This order indicates that Rose violated the terms of his probation when he was arrested in Murray County, but the parties do not dispute that Rose was actually arrested in Whitfield County.

U.S.C. § 1983.<sup>2</sup> Rose asserted that his incarceration between April 20, 2014 and April 20, 2016 was proper, but his detention between April 21, 2016 until he was released on September 27, 2017 was improper. According to the complaint,

the negligent performance of ministerial duties and deliberate indifference of officials of the Georgia Department of Corrections led to him being incarcerated for seventeen (17) months longer than his proper two year sentence of incarceration, in direction contravention of the Superior Court’s sentencing Order and state law regarding probation revocation.

Rose stated that no official of the Georgia Department of Corrections intended to improperly incarcerate him and that he was promptly released once the ministerial error was uncovered.

The Department moved to dismiss the complaint, arguing that Rose failed to comply with ante litem notice provisions and that the claim was barred by sovereign immunity. The trial court granted the motion, finding that Rose’s “claim against [the Department] for negligently extending his incarceration beyond his release date constitutes a claim for false imprisonment for which the State and its agencies cannot be held liable pursuant to O.C.G.A. 50-21-24 (7).” Rose appeals.

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<sup>2</sup> The individual defendants included Department officials and a State Board of Pardons and Parole official. Rose and the Department filed a joint motion to dismiss the individual defendants, and the trial court granted the motion. In addition, Rose admits he has no claim under federal law.

In Georgia, sovereign immunity insulates the state and its departments and agencies from liability except to the extent that the legislature enacts a specific waiver. Ga. Const. 1983, Art. I, Sec. II, Par. IX (e). The waiver exceptions are enumerated in OCGA § 50-21-24, and the “false imprisonment” exception is among them. OCGA § 50-21-24 (7) (“The state shall have no liability for losses resulting from . . . [a]ssault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, or interference with contractual rights[.]”). False imprisonment is defined as “the unlawful detention of the person of another, for any length of time, whereby such person is deprived of his personal liberty.” OCGA § 51-7-20. “The party seeking to benefit from a waiver of sovereign immunity has the burden to establish waiver[.]” (Citation omitted.) *Southerland v. Ga. Dept. of Corrections*, 293 Ga. App. 56, 57 (666 SE2d 383) (2008).

In two related enumerations of error, Rose contends that the trial court erred by holding that (1) “the negligent extension of a prison sentence is necessarily a claim of false imprisonment” and (2) “negligence resulting in an improperly extended prison sentence is an excluded cause of action under the GTCA.” According to Rose, his complaint asserted a negligence cause of action, not a false imprisonment cause of action, because no Department official intended to improperly incarcerate him and

his extended detention was due to a “negligent breach of various ministerial duties” rather than an intentional tort. Rose admits he could not maintain a false imprisonment cause of action against the Department. However, it is an elementary rule of pleading that “substance and not mere nomenclature . . . controls; pleadings are judged by their function and not the name given by a party.” (Citations omitted.) *Manning v. Robertson*, 223 Ga. App. 139, 142 (2) (476 SE2d 889) (1996); see also *Rodriguez v. Nunez*, 252 Ga. App. 56, 59 (3) (555 SE2d 514) (2001) (“[t]here is no magic in the title” given by a plaintiff in a complaint). Regardless of Rose’s characterization of his cause of action, Rose’s complaint alleged a false imprisonment claim, and, therefore, was barred under OCGA § 50-21-24 (7).

This Court addressed a virtually identical situation in *Watson*, supra, 285 Ga. App. at 144. In that case, the defendant was incarcerated for over a year longer than he should have been because the Department failed to give him credit for time served, as ordered by the trial court’s sentence. Watson filed a tort suit against the Department based on the Department “negligently incarcerating him beyond his scheduled release date[.]” *Id.* at 144. The trial court dismissed the suit, finding that sovereign immunity barred Watson’s claim, and we affirmed. Specifically, this Court held:

Watson alleges that the Department negligently extended his incarceration beyond the date he should have been released. Therefore, his tort claim is a claim of false imprisonment. Given that under OCGA § 50-21-24 (7), the State and its agencies cannot be held liable for a plaintiff's losses resulting from false imprisonment, Watson's tort claim against the Department is barred by the State's sovereign immunity. Accordingly, the trial court did not err in dismissing this claim.

(Citations omitted.) *Id.* at 144 (1). Our decision in *Watson* controls this case.

Recognizing that *Watson* is dispositive, Rose “urges that the rule in *Watson* conflicts with Georgia Supreme Court precedent and the common law rule of torts because it conflates a claim for negligence in computing a sentence with the intentional tort of false imprisonment” and requests us to “revisit the holding of *Watson*.” Rose cites the Supreme Court case of *Stewart v. Williams*, 243 Ga. 580, 581 (1) (255 SE2d 699) (1979), to support his argument. However, *Stewart* is inapposite. In that case, a deputy sheriff attempting to execute an arrest warrant arrested and detained Stewart, the wrong individual. Stewart sued the sheriff and deputy sheriff, alleging the deputy sheriff negligently and irresponsibly performed his duties, leading to the deputy sheriff “falsely, illegally and negligently” arresting him. *Id.* at 582 (1). The Supreme Court held that, even though Stewart had couched his complaint in terms of negligence, the complaint asserted a cause of action for the intentional tort

of false imprisonment because there is no tort for “negligent false imprisonment.” *Id.* at 581-582 (1).

As in *Stewart*, despite the fact that Rose labels his claim as one of negligence, the facts and allegations in his complaint contend that he was unlawfully imprisoned and stated a claim for false imprisonment. The complaint alleged that Department officials negligently calculated Rose’s sentence improperly, leading to his “unlawful detention” for 17 extra months, whereby he was “deprived of his personal liberty.” OCGA § 51-7-20. The fact that Department officials may have acted in good faith and did not intend to “unlawfully” detain Rose is irrelevant. Indeed, taking the allegations in the complaint as true, the Department unlawfully, knowingly confined Rose and deprived him of his liberty, thus falsely imprisoning him, for the duration of any miscalculated sentence. Because “[t]he only essential elements of [a false imprisonment] action [are] the detention and its unlawfulness, malice and the want of probable cause need not be shown.” *Ferrell v. Mikula*, 295 Ga. App. 326, 329 (2) (672 SE2d 7) (2008).

*Southerland*, supra, 293 Ga. App. at 58 (1), supports this conclusion. In *Southerland*, the mother of an inmate who died in prison sued the Department alleging that prison employees negligently failed to follow Department policies and

procedures and violated state laws in housing her son with a particular inmate, resulting in her son's death following an assault and battery by that inmate. This Court held that the mother's claim was barred by sovereign immunity because, despite the mother's claim that the death was occasioned by the Department's failure to follow established policies and procedures, the act causing the underlying loss – the beating – constituted battery, an exception to the waiver of sovereign immunity. *Id.* at 58 (1). This Court noted that “[i]n determining whether the exception set forth in OCGA § 50-21-24 (7) applies, the focus is not on the government action taken or the duty allegedly breached by the government, but on the act causing the underlying loss.” (Citation and punctuation omitted.) *Southerland*, supra, 293 Ga. App. at 58-59 (1). Here, the act causing the underlying loss is the Department's intentional detention of Rose after he had allegedly served his sentenced time. Assuming Rose was illegally detained, whether this act was the result of an innocent mistake, the negligent failure to follow established policies and procedures, or malice is irrelevant.

Rose further asserts that his complaint did not assert a claim for false imprisonment because he was detained pursuant to “mistaken process.” Rose relies on *Williams v. Smith*, 179 Ga. App. 712, 714 (2) (348 SE2d 50) (1986), for the proposition that a false imprisonment action “can not be maintained where the



process is valid,” and he asserts that “jailers who hold a prisoner pursuant to a sentence – even an improper one – are not liable for false imprisonment.” Contrary to Rose’s argument on appeal, his complaint allegations are not that he was detained pursuant to process, and his argument is inapplicable given the circumstances of this case. Here, the Department undisputedly properly detained Rose pursuant to process and the trial court’s sentence from April 20, 2014 until April 20, 2016. Taking Rose’s complaint allegations as true, however, any further detention was not pursuant to valid process as it exceeded the trial court’s sentence. If the Department refused to release Rose when the sentence under which he was confined had expired, such detention was unlawful and constituted false imprisonment.

As a final argument, Rose claims that in *Ga. Dept. of Transp. v. Heller*, 285 Ga. 262, 266 (674 SE2d 914) (2009), “the Georgia Supreme Court signaled a potential change” in the reasoning underlying *Watson*. In *Heller*, the Supreme Court determined that two events were independently responsible for the plaintiff’s loss in an automobile accident — one of which fell under the protection of sovereign immunity and one of which constituted conduct for which the Georgia Tort Claims Act expressly waived the protection of sovereign immunity. Because of the competing sections of the Georgia Tort Claims Act, the Supreme Court found that the

State had waived its sovereign immunity with respect to the car accident that led to the victim's death. *Id.* at 266 (1). Not only does *Heller* not apply to the factual circumstances of this case, but the Supreme Court of Georgia has never overruled our Court's holding in *Watson*, *supra*, 285 Ga. App. at 144, or in any of the other controlling cases. *Heller*, therefore, has not undermined the reasoning or analysis of *Watson*.

Although Rose characterizes his complaint as a negligence action and repeatedly argues that his complaint was based on negligence because Department officials negligently performed their ministerial duties and improperly calculated his detention period, the act causing the underlying alleged loss – confining him for 17 extra months – constitutes false imprisonment, an exception to the waiver of sovereign immunity. The Department is entitled to sovereign immunity, and the trial court did not err in dismissing Rose's complaint against the Department.

*Judgment affirmed. Dillard, P. J., and Gobeil, J., concur.*