

[Cite as *In re Krul*, 2003-Ohio-4992.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

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|------------------------|-----------|---------------------------|
| IN RE: MATTHEW J. KRUL | : | Case No. V2002-51044 |
| MATTHEW J. KRUL | : | <u>ORDER OF A THREE-</u> |
| CATHY KRUL | : | <u>COMMISSIONER PANEL</u> |
| Applicants | : | |
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{¶1} On April 2, 2002, the Attorney General issued a Finding of Fact and Decision denying the applicants’ claim pursuant to R.C. 2743.60(F) contending that the victim engaged in substantial contributory misconduct. The Attorney General stated that the assault resulted from a drug sale dispute. The Attorney General also denied the claim pursuant to R.C. 2743.60(E) contending that the victim engaged in felonious conduct. The Attorney General asserted that the victim admitted to a detective that he previously engaged in drug trafficking. On May 3, 2002, a request to reconsider was filed. On June 20, 2002, the Attorney General issued a Final Decision denying the claim once again. The Attorney General stated that the victim admitted to Detective Nicolino that he previously sold marijuana to Charlie Bret and Dustin Vanhooose. On July 11, 2002, the Attorney General’s Final Decision was appealed. On November 26, 2002, the panel of commissioners affirmed the Attorney General’s Final Decision. On April 23, 2003, Judge Bettis set aside the panel’s decision and remanded the claim to the panel to consider additional

evidence. Hence, this appeal came to be heard before this panel of three commissioners on July 9, 2003 at 11:15 A.M.

{¶2} Cathy Krul and an Assistant Attorney General attended the hearing and presented testimony, an exhibit, and oral argument for this panel's consideration. Ms. Krul briefly asserted that the claim should be allowed. Ms. Krul argued that Jason (the offender) and Joshua Rowles' alleged drug activity statements to the police are not credible since two other witnesses stated that the dispute actually arose over stereo equipment. Ms. Krul suggested that since Jason and Joshua are siblings they would lie to cover for each other, even though Jason was ultimately convicted of aggravated assault against her son. Ms. Krul further asserted that the victim's November 6, 2001 taped statement to the police, Exhibit 1, fails to contain an admission by Matthew concerning any alleged drug trafficking.

{¶3} Detective Kevin Nicolino of the Portage County Sheriff's Office testified that he investigated the November 1, 2001 matter. Detective Nicolino stated that he was informed by several individuals that the incident stemmed from drug activity. Detective Nicolino further testified that Matthew verbally advised him that he had previously sold drugs.

{¶4} The Assistant Attorney General maintained that the claim should be denied since it is clear that the victim engaged in substantial contributory misconduct as well as felonious conduct. The Assistant Attorney General argued that Matthew admitted to Detective Nicolino that he had previously sold drugs. The Assistant Attorney General also asserted that Jason and Joshua had no reason to lie to the police about the dispute arising over a bad drug transaction. In fact, the Attorney General contended that their admission to participating in illegal drug activity was contrary to their own interests. The Assistant Attorney General further suggested that

Matthew should have testified on his own behalf since he is able to recall the events of November 1, 2001.

{¶5} R.C. 2743.60(E)(3) states:

“(E) The attorney general, a panel of commissioners, or a judge of the court of claims shall not make an award to a claimant if any of the following applies:

* * *

“(3) It is proved by a preponderance of the evidence that the victim or the claimant engaged, within ten years prior to the criminally injurious conduct gave rise to the claim or during the pendency of the claim, in an offense of violence, a violation of section 2925.03 of the Revised Code, or any substantially similar offense that also would constitute a felony under the laws of this state, another state, or the United States.”

{¶6} From review of the file and with full and careful consideration given to all the information presented at the hearing, this panel makes the following determination. We find that the victim engaged in drug trafficking within ten years of the criminally injurious conduct. In In re Paige (1994), 66 Ohio Misc. 2d 156, a judge of the Court of Claims found “that the admission of possession of heroin within ten years prior to the criminally injurious conduct proves by a preponderance of the evidence that the applicant has committed a felonious act.” Likewise, we find the victim’s admission to a police detective in this case to be sufficient evidence that the victim engaged in felonious conduct, drug trafficking. Detective Nicolino testified that the victim, himself, revealed that he had previously sold drugs. We find the victim’s statement against interest to be reliable. Based on the uncontradicted evidence presented, we find that the applicants’ claim for an award of reparations must be denied pursuant to R.C. 2743.60(E). Therefore, the June 20, 2002 decision of the Attorney General shall be affirmed.

{¶7} IT IS THEREFORE ORDERED THAT

{¶8} 1) The June 20, 2002 decision of the Attorney General is DENIED;

- {¶9} 2) This claim is DENIED and judgment is entered for the state of Ohio;
- {¶10} 3) Costs are assumed by the court of claims victims of crime fund.

DALE A. THOMPSON
Commissioner

CLARK B. WEAVER, SR.
Commissioner

ASHER W. SWEENEY
Commissioner