

[Cite as *In re McMurty*, 2004-Ohio-3234.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: GARY S. MC MURTRY	:	Case No. V2003-40747
NIONA R. MORRIS	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶1} The applicant filed a reparations application seeking reimbursement for expenses incurred in relation to the May 17, 2002 murder of Gary McMurtry. On April 2, 2003, the Attorney General denied the applicant’s claim pursuant to R.C. 2743.60(F) and In re Dawson (1993), 63 Ohio Misc. 2d 79, contending that the decedent engaged in substantial contributory misconduct since he tested positive for cocaine on the coroner’s toxicology report. On April 30, 2003, the applicant filed a request for reconsideration. On July 1, 2003, the Attorney General denied the claim once again. On July 29, 2003, the applicant appealed the Attorney General’s July 1, 2003 decision. On October 22, 2003, this panel of commissioners heard this matter. On November 26, 2003, this panel stayed the proceedings until a judge of the Court of Claims rendered a decision on a similar case. On February 24, 2004, Judge Bettis rendered a decision in In re Howard, V03-40411jud (2-24-04).

{¶2} 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. The

toxicology report indicated that the amount of cocaine present in the victim's system at the time of his death was consistent with recreational usage levels. In In re Howard, V03-40411jud (2-24-04), Judge Bettis held that a "positive result on the toxicology report is sufficient evidence that the decedent engaged in felonious drug use. Accordingly, it is presumed that the decedent's drug use contributed to the criminally injurious conduct." Likewise, we find that this decedent engaged in substantial contributory misconduct since he tested positive for cocaine on the coroner's toxicology screening. Therefore, the July 1, 2003 Final Decision of the Attorney General shall be affirmed.

{¶3} IT IS THEREFORE ORDERED THAT:

{¶4} 1) The July 1, 2003 decision of the Attorney General is AFFIRMED;

{¶5} 2) This claim is DENIED and judgment is entered for the state of Ohio;

{¶6} 3) Costs are assumed by the court of claims victims of crime fund.

JAMES H. HEWITT III
Commissioner

LEO P. MORLEY
Commissioner

KARL H. SCHNEIDER
Commissioner

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ORDER

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