

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: MICHELE Y. EARLEY	:	Case No. V2002-50102
MICHELE Y. EARLEY	:	<u>ORDER OF A THREE-</u> <u>COMMISSIONER PANEL</u>
Applicant	:	
(1997-65366)	:	
	: : : : :	

{¶1} On September 18, 1997, the applicant filed a reparations application seeking reimbursement of expenses incurred with respect to a December 6, 1996 assault incident. On July 14, 2003, the applicant filed a supplemental compensation application. On November 12, 2003, the Attorney General denied the claim pursuant to R.C. 2743.52(A) contending that the applicant failed to prove she incurred economic loss as a result of the criminally injurious conduct. On December 5, 2003, the applicant filed a request for reconsideration. On January 9, 2004, the Attorney General denied the claim pursuant to former R.C. 2743.60(E)(3) asserting that the applicant engaged in felonious conduct, intimidation (in violation of R.C. 2921.03), during the pendency of the claim. On January 26, 2004, the applicant appealed the Attorney General's January 9, 2004 Final Decision. On March 18, 2004, the Attorney General filed a Statement in Lieu of Brief contending that the claim should be denied since the applicant engaged in felony intimidation in violation of R.C. 2921.03, even though the applicant's conviction of felony intimidation under R.C. 2921.04 was dismissed on appeal. Hence, this

matter came to be heard before this panel of three commissioners on April 22, 2004 at 10:02 A.M.

{¶2} The *pro se* applicant and an Assistant Attorney General attended the hearing and presented testimony and brief comments for the panel's consideration. Michele Earley testified that her wrongful conviction has nothing to do with her claim for compensation and hence requested that she be reimbursed for all out-of-pocket expense incurred with respect to the assault. Ms. Earley also explained what transpired with respect to her intimidation case and insisted that she never acted feloniously. Ms. Earley asserted that she has had numerous problems with the Attorney General's Office and that she believes she is being discriminated against with respect to her claim for an award of reparations.

{¶3} The Assistant Attorney General maintained that the Final Decision should be affirmed since there is ample evidence that the applicant engaged in felony intimidation in violation of R.C. 2921.03. The Assistant Attorney General acknowledged that the Court of Appeals dismissed the applicant's conviction of intimidation under R.C. 2921.04, but insisted that the applicant nevertheless engaged in felony intimidation as defined in R.C. 2921.03. The Assistant Attorney General stated that the Court of Appeals asserted that the applicant had merely been indicted under the wrong code section. The Assistant Attorney General argued the fact that the applicant was charged under the wrong code section has no bearing on whether the applicant engaged in felonious behavior in violation of R.C. 2921.03. Based on the evidence presented during Ms. Earley's criminal trial for intimidation, the Assistant Attorney General argued that the applicant's claim must be denied pursuant to former R.C. 2743.60(E)(3).

{¶4} Former R.C. 2743.60(E)(3) states:

{¶5} (E) Neither a single commissioner nor a panel of commissioners shall make an award to a claimant if any of the following applies:

{¶6} (3) It is proved by a preponderance of the evidence presented to the commissioner or the panel that the victim or the claimant engaged, within ten years prior to the criminally injurious conduct that gave rise to the claim or during the pendency of the claim, in conduct that would constitute a felony under the laws of this state, another state, or the United States.

{¶7} 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. Based on the Court of Appeals decision and the statement of facts contained therein, we find, by a preponderance of the evidence, that the applicant engaged in felony intimidation in violation of R.C. 2921.03. Ann Marie McKenzie, a bond information clerk for the Cuyahoga County Clerk of Court's office, testified during the criminal trial that on November 27, 2000 the applicant pulled her into a women's restroom, grabbed her hand, began to squeeze it, and refused to let go. Ms. McKenzie testified that the applicant yelled at her and informed her that she was a friend of Ralph Watts and that whatever suit she had filed against Mr. Watts she had better drop it. Ms. McKenzie further testified that the applicant told her she would do anything to protect Mr. Watts. Ms. McKenzie stated that the applicant had hurt her hand and she believed the applicant's actions were an indication of her ability to harm her. We also note that several witnesses testified, including deputy sheriffs, with respect to the ordeal. The trial court records, as recounted in the appellate record confirms these facts. Therefore, the January 9, 2004 Final Decision of the Attorney General shall be affirmed pursuant to former R.C. 2743.60(E)(3).

{¶8} IT IS THEREFORE ORDERED THAT:

{¶9} 1) The January 9, 2004 decision of the Attorney General is AFFIRMED;

{¶10} 2) This claim is DENIED and judgment is rendered in favor of the state of Ohio;

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

KARL H. SCHNEIDER
Commissioner

LEO P. MORLEY
Commissioner

ROBERT B. BELZ
Commissioner

ID #\3-dld-tad-050504

A copy of the foregoing was personally served upon the Attorney General and sent by regular mail to Cuyahoga County Prosecuting Attorney and to:

Filed 5-26-2004
Jr. Vol. 2253, Pgs 160-163
To S.C. Reporter 6-30-2004