

[Cite as *In re Sanders*, 2004-Ohio-4590.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: ALAPHONSO O. SANDERS :

HEATHER R. LANNING : Case No. V2003-40917

BESSIE SANDERS : Case No. V2003-41034

Applicants : DECISION

: Judge J. Warren Bettis

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{¶1} This matter came on to be considered upon applicants' appeal from the April 21, 2004, order issued by the panel of commissioners. The panel's determination affirmed the final decision of the Attorney General, which denied applicants' claim for an award of reparations based upon the finding that the decedent engaged in substantial contributory misconduct, drug trafficking, shortly before he was shot.

{¶2} R.C. 2743.52(A) places the burden of proof on an applicant to satisfy the Court of Claims Commissioners that the requirements for an award have been met by a preponderance of the evidence. *In re Rios* (1983), 8 Ohio Misc.2d 4, 8 OBR 63, 455 N.E.2d 1374. The Attorney General bears the burden of proof by a preponderance of the evidence with respect to the exclusionary criteria of R.C. 2743.60. *In re Williams*, V77-0739jud (3-26-79). The panel found, upon review of the evidence, that the Attorney

General presented sufficient evidence to meet his burden.

{¶3} The standard for reviewing claims that are appealed to the court is established by R.C. 2743.61(C), which provides in pertinent part: "If upon hearing and consideration of the record and evidence, the judge decides that the decision of the panel of commissioners is unreasonable or unlawful, the judge shall reverse and vacate the decision or modify it and enter judgment on the claim. The decision of the judge of the court of claims is final."

{¶4} This court has previously held that involvement in illegal drug activity is inherently dangerous and constitutes substantial contributory misconduct. See, e.g., *In re Taylor*, V91-88381sc (5-21-92). In this case, a police report in the claim file shows that applicant Heather Lanning made a statement to an investigating detective that provided detailed information regarding the decedent's drug trafficking activity just prior to the criminally injurious conduct. According to the police report, the decedent had been selling marijuana that afternoon from his residence and was in the process of selling a "20 sack" to one of the offenders when he was shot. Although Lanning has since recanted her statement to police, she testified before the panel of commissioners and the panel found her initial account to be more accurate and reliable. This court will not substitute its judgment for that of the trier of fact.

{¶5} Upon review of the file in this matter, the court finds that the panel of commissioners was not arbitrary in finding that applicants were not entitled to an award of reparations.

{¶6} Based on the evidence and R.C. 2743.61, it is the

court's opinion that the decision of the panel of commissioners was reasonable and lawful. Therefore, this court affirms the decision of the three-commissioner panel, and hereby denies applicants' claim.

J. WARREN BETTIS

Judge

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Applicants : ORDER

: Judge J. Warren Bettis

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{¶7} Upon review of the evidence, the court finds the order of the panel of commissioners must be affirmed and applicants' appeal must be denied.

{¶8} IT IS HEREBY ORDERED THAT:

- 1) The order of April 21, 2004, (Jr. Vol. 2253, Pages 89-92) is approved, affirmed and adopted;
- 2) This claim is DENIED and judgment entered for the State of Ohio;
- 3) Costs assumed by the reparations fund.

Case Nos. V2003-40917
V2003-41034

-2-

DECISION

Filed 7-27-2004
Jr. Vol. 97J. WARREN BETTIS
To S.C. Reporter 8-26-2004 Judge

AMR/cmd

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