

[Cite as *In re Blake*, 2004-Ohio-4614.]

**IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION**

IN RE:	THEODORA M. BLAKE	:	Case No. V2003-40429
	THEODORA M. BLAKE	:	<u>ORDER OF A THREE-</u>
		:	<u>COMMISSIONER PANEL</u>
	Applicant	:	
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{¶1} The applicant filed a reparations application seeking reimbursement of expenses incurred with respect to a July 31, 2002 sexual assault incident. On February 13, 2003, the Attorney General denied the claim pursuant to R.C. 2743.60(C) contending that the applicant failed to fully cooperate with law enforcement officials in the investigation of the incident, since she refused to disclose the offender's identity, which substantially hindered the investigation/prosecution of the offender. On February 26, 2003, the applicant filed a request for reconsideration. On April 28, 2003, the Attorney General denied the claim once again. On May 7, 2003, the applicant filed a notice of appeal to the Attorney General's April 28, 2003 Final Decision. Hence, this matter came to be heard before this panel of three commissioners on May 19, 2004 at 1:40 P.M.

{¶2} Applicant's counsel and an Assistant Attorney General attended the hearing and presented oral argument for the panel's consideration. Counsel stated, based upon the information contained in the file, that the applicant's claim should be allowed. Counsel argued that, as a result of the drug induced rape, the applicant sustained severe mental distress, which also triggered memories of the sexual abuse she sustained as a child. Counsel noted that Mrs.

Blake has been diagnosed with post traumatic stress disorder, occasionally self mutilates, has been hospitalized on numerous occasions, and has been and is currently under a physician's care. In light of the applicant's mental state, counsel asserted that Mrs. Blake was psychologically unable to fully assist the police in the investigation of the incident and hence her non-disclosure of the offender's identity should not be considered a complete failure to cooperate. Counsel asserted that the applicant attempted to assist the police as best she could and that Mrs. Blake's conduct should be considered excusable neglect, if anything, based upon her medical condition. Counsel also asserted that even if the applicant had disclosed the offender's identity, the applicant's assistance to the police would be minimal in light of her mental condition. Counsel noted that the applicant contacted the police on several occasions to assist them in their investigation and even offered to take a polygraph examination.

{¶3} Moreover, counsel argued that the confusion between the applicant and the police stemmed from a lack of communication and not from the applicant's refusal to assist the police. Counsel contended that the police had other means of obtaining the offender's name, but chose not to investigate other readily available sources. Counsel argued that the applicant should not be punished for law enforcement's neglect to fully investigate the case.

{¶4} The Assistant Attorney General maintained that the applicant failed to fully cooperate with law enforcement officials since she refused to disclose the offender's identity, which substantially hindered the investigation/prosecution of the offender. The Assistant Attorney General asserted, despite the applicant's impaired mental condition, that Mrs. Blake was not unable to supply the police with the offender's name. The Assistant Attorney General contended that the applicant could have divulged the offender's name to the police with minimal

effort. The Assistant Attorney General further argued that even when the applicant attempted to assist the police, by providing a statement, Mrs. Blake still redacted the name of the offender to the detriment of the investigation.

{¶5} R.C. 2743.60(C) states:

(C) The attorney general, a panel of commissioners, or a judge of the court of claims, upon a finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, may deny a claim or reconsider and reduce an award of reparations.

{¶6} From review of the file and with full and careful consideration given to the information presented at the hearing, this panel makes the following determination. We find that the applicant's refusal to disclose the offender's name did not substantially impede the investigation/prosecution of the offender in order to deny the claim. We do, however, find that the applicant did not fully cooperate with law enforcement in the investigation of the claim since the applicant failed to simply provide the offender's name to the police. Even though the police could have and probably should have sought the assistance of other individuals in determining the offender's identity, we find that an applicant must still cooperate with law enforcement to the best of his/her ability according to R.C. 2743.60(C). We recognize that this ordeal has been traumatic for the applicant and that she has sustained severe emotional distress as a result of the criminally injurious conduct, but we nevertheless believe that this applicant, in light of the assistance she had previously provided to the police, was capable of divulging the offender's identity to the police. Therefore the April 28, 2003 decision of the Attorney General shall be reversed to allow the applicant to recover an award of reparations with a 10 percent reduction in

the amount of the award due to the applicant's refusal to fully cooperate with law enforcement in accordance with R.C. 2743.60(C), by failing to disclose the offender's identity.

{¶7} IT IS THEREFORE ORDERED THAT

- 1) The April 28, 2003 decision of the Attorney General is REVERSED to render judgment in favor of the applicant. However, this and all future awards shall be reduced by 10 percent pursuant to R.C. 2743.60(C);
- 2) This claim is referred to the Attorney General for economic loss calculations and decision in light of the panel's findings;
- 3) This order is entered without prejudice to the applicant's right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;
- 4) 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

ID #\10-dld-tad-060804

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

Filed 7-13-2004
Jr. Vol. 2254, Pgs. 67-70
To S.C. Reporter 8-26-2004