

[Cite as *In re Montgomery*, 2004-Ohio-940.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: JEANETTE MONTGOMERY	:	Case No. V2003-41182
JEANETTE MONTGOMERY	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶1} Originally, the applicant filed a reparations application seeking reimbursement for expenses incurred in relation to the April 16, 2002 murder of her son, Troy Montgomery. On June 6, 2002, the Attorney General issued a Finding of Fact and Decision denying the applicant's claim pursuant to R.C. 2743.60(E) contending that Troy had been convicted of trafficking in cocaine, a fifth degree felony, on August 21, 2000. On July 15, 2002, the applicant filed a request for reconsideration asserting that she was also a victim of criminally injurious conduct. On July 30, 2002, the Attorney General issued a Final Decision denying the claim once again. On August 21, 2002, the applicant filed a notice of appeal. However, the court did not receive notice of that appeal until August 27, 2003. On December 16, 2003, this panel severed case number V2003-40801 concerning Troy Montgomery as the victim and created case number V2003-41182 to concern Jeanette Montgomery as the victim. Hence, the applicant's appeal of her status as a victim in her own right was heard before this panel of three commissioners on November 20, 2003 at 10:20 A.M.

{¶2} The applicant and an Assistant Attorney General attended the hearing and presented testimony, exhibits, and oral arguments for this panel's consideration. Jeanette Montgomery briefly testified that her daughter contacted her and told her that Troy had been hurt. Ms. Montgomery stated that she went to the scene of the crime and observed a few people standing around as well as the security tape and a couple of police officers. Ms. Montgomery explained that she left the scene immediately after being informed that her son was en route to the hospital. Ms. Montgomery contended that once she arrived at the hospital she was prohibited from seeing her son and was later informed that he had expired. Ms. Montgomery indicated that she incurred wage loss as a result of the criminally injurious conduct in order to attend counseling sessions, the funeral and the trial. Lastly, Ms. Montgomery asserted that she should be compensated since she is aware of others recovering from the fund, despite having engaged in some type of prohibited behavior.¹

{¶3} From review of the file and with full and careful consideration given to all the information presented at the hearing, we make the following determination. Although, we

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Ms. Montgomery cited In re Dyer, V96-43661tc (6-8-98) as relevant case law. This panel has reviewed that case and has determined that the facts of the present case are clearly distinguishable from the facts indicated in Dyer. In Dyer, this panel of commissioners reversed the single commissioner's denial based on the evidence presented at oral hearing, that the Attorney General failed to prove by a preponderance of the evidence that the decedent engaged in substantial contributory misconduct by having participated in a drive-by- shooting.

empathize with the applicant over the loss of her son, we find that the applicant fails to qualify as a victim in her own right based on the information presented. Therefore, the July 30, 2002 decision of the Attorney General shall be affirmed.

{¶4} IT IS THEREFORE ORDERED THAT

- {¶5} 1) The July 30, 2002 decision of the Attorney General is AFFIRMED;
- {¶6} 2) This claim is DENIED and judgment is entered for the state of Ohio;
- {¶7} 3) Costs are assumed by the court of claims victims of crime fund.

KARL H. SCHNEIDER
Commissioner

LEO P. MORLEY
Commissioner

JAMES H. HEWITT III
Commissioner

ID #\1-dld-tad-112403

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

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