

[Cite as *In re Totton*, 2005-Ohio-1456.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: JAMES TOTTON : Case No. V2004-60342
JAMES TOTTON : DECISION

Applicant : Judge J. Craig Wright

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{¶ 1} This matter came on to be considered upon applicant's appeal from the October 14, 2004, order issued by the panel of commissioners. The panel's determination affirmed the final decision of the Attorney General, which denied applicant's claim for an award of reparations based upon the finding that applicant failed to file a reparations application within two years of the criminally injurious conduct.

{¶ 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 panel found, upon review of the evidence, that applicant failed to present 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} Applicant claims that he was injured in a robbery that occurred on March 6, 2000. His reparations application was filed on May 12, 2003. At the judicial hearing, applicant explained that he believed he did not have to submit his reparations application until after the offender's criminal trial was completed. Applicant further asserts that the prosecuting attorney did not inform him of his right to file a reparations application and that he was unaware of the two-year filing requirement.

{¶ 5} R.C. 2743.60(A) provides, in pertinent part: "The attorney general, a court of claims panel of commissioners, or a judge of the court of claims shall not make or order an award of reparations to any claimant who, if the victim of the criminally injurious conduct was an adult, did not file an application for an award of reparations within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which the victim is seeking an award of reparations ***."

{¶ 6} R.C. 2743.56(B) also requires that an adult must file a reparations application within two years after the occurrence of the criminally injurious conduct.

{¶ 7} This court has consistently held that the two-year statute of limitations set forth in R.C. 2743.60(A) and 2743.56(B) is mandatory and jurisdictional. See *In re Clark* (1983), 8 Ohio Misc.2d 34.

{¶ 8} Upon review of the file in this matter, the court finds that the panel of commissioners was not arbitrary in finding that applicant did not show by a preponderance of the evidence that he was entitled to an award of reparations.

{¶ 9} 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 applicant's claim.

J. CRAIG WRIGHT

Judge

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JAMES TOTTON : ORDER

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Upon review of the evidence, the court finds the order of the panel of commissioners must be affirmed and applicant's appeal must be denied.

IT IS HEREBY ORDERED THAT:

- 1) The order of October 14, 2004, (Jr. Vol. 2255, Pages 62-63) 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 No. V2004-60342

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DECISION

J. CRAIG WRIGHT
Judge

AMR/cmd

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

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Jr. Vol. 2256, Pg. 67
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