

[Cite as *In re Wilson*, 2005-Ohio-7127.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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| IN RE: RODNEY WILSON | : | Case No. V2005-80517 |
| ROSA PRYOR | : | <u>ORDER OF A THREE-</u> |
| Applicant | : | <u>COMMISSIONER PANEL</u> |
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{¶ 1} The applicant filed a reparations application seeking reimbursement of expenses incurred with respect to a February 26, 2005 hit and run accident, whereby Rodney Wilson (“decedent”) was killed. On April 11, 2005, the Attorney General denied the claim pursuant to R.C. 2743.60(E) contending that the decedent had engaged in felonious drug use at the time of the criminally injurious conduct, since he tested positive for cocaine on the coroner's toxicology report. On May 11, 2005, the applicant filed a request for reconsideration. On June 10, 2005, the Attorney General determined that no modification of the previous decision was warranted. On July 11, 2005, the applicant filed a notice of appeal to the Attorney General's Final Decision. Hence, this matter came to be heard before this panel of three commissioners on October 5, 2005 at 11:30 A.M.

{¶ 2} Neither the applicant nor anyone on her behalf appeared at the hearing. An Assistant Attorney General attended the hearing and indicated that the claim was denied pursuant to R.C. 2743.60(E) based upon the decedent's positive toxicology report for cocaine.

{¶ 3} Revised Code 2743.51(C)(1) states:

(C) "Criminally injurious conduct" means one of the following:

(1) For the purposes of any person described in division (A)(1) of this section, any conduct that occurs or is attempted in this state; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, except when any of the following applies:(a) The person engaging in the conduct intended to cause personal injury or death;(b) The person engaging in the conduct was using the vehicle to flee immediately after committing a felony or an act that would constitute a felony but for the fact that the person engaging in the conduct lacked the capacity to commit the felony under the laws of this state;

(c) The person engaging in the conduct was using the vehicle in a manner that constitutes an OMVI violation;

(d) The conduct occurred on or after July 25, 1990, and the person engaging in the conduct was using the vehicle in a manner that constitutes a violation of section 2903.08 of the Revised Code.

{¶ 4} From review of the file and with full and careful consideration given to the information presented at the hearing, we make the following determination. The issue of whether the decedent qualifies as a victim of criminally injurious conduct is jurisdictional in nature and hence must first be addressed by this panel.¹ We find that the decedent fails to qualify as a victim of criminally injurious conduct.

{¶ 5} According to Toledo Police Accident Investigator, Dennis Cole, the decedent was jaywalking through the middle of an intersection when he was struck. The driver of the vehicle had the green light at the time the decedent was crossing the intersection. Witnesses stated that

¹Panel hearings are de novo and affords applicants with due process rights. New evidence may be submitted and new issues raised. *In re Martin* (1988), 61 Ohio Misc. 2d 280.

they and the decedent had been drinking prior to the accident. The coroner's toxicology report confirms that the decedent had acute ethanol and cocaine intoxication. Unfortunately, based upon the above information, we are unable to find any evidence that the unknown driver illegally caused the decedent's death since the driver had the right of way. Since there is no criminally injurious conduct, then the decedent fails to qualify as a victim of such conduct. Therefore, the June 10, 2005 decision of the Attorney General shall be affirmed pursuant to R.C. 2743.52(A).

IT IS THEREFORE ORDERED THAT

- 1) The June 10, 2005 decision of the Attorney General is AFFIRMED pursuant to R.C. 2743.52(A);
- 2) This claim is DENIED and judgment is rendered for the state of Ohio;
- 3) Costs are assumed by the court of claims victims of crime fund.

THOMAS H. BAINBRIDGE
Commissioner

CLARK B. WEAVER, SR.
Commissioner

TIM MC CORMACK
Commissioner

ID #\1-dld-tad-101105

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

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