

[Cite as *In re Simmons*, 2005-Ohio-817.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: RICHARD R. SIMMONS	:	Case No. V2004-60644
RICHARD R. SIMMONS	:	<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 in relation to an April 20, 2003 shooting incident at his home. On February 23, 2004, the Attorney General denied the claim pursuant to former R.C. 2743.60(E)(3) contending that the applicant engaged in felonious conduct, drug trafficking, on March 31, 2003 when he sold crack cocaine to a confidential police informant. On March 24, 2004, the applicant filed a request for reconsideration. On May 28, 2004, the Attorney General denied the claim once again. On June 30, 2004, the applicant filed a notice of appeal to the Attorney General's May 28, 2004 Final Decision. Hence, this appeal came to be heard before this panel of three commissioners on December 1, 2004 at 10:35 A.M.

{¶ 2} The applicant, applicant's counsel, and an Assistant Attorney General attended the hearing and presented testimony, an exhibit, and oral argument for this panel's consideration. Richard Simmons testified that Michael Proctor, a person he knew from his neighborhood, visited his home for approximately 10-20 minutes on March 31, 2003, however no drugs or money was illegally exchanged between him and Mr. Proctor. Mr. Simmons explained that he was arrested for drug trafficking, a felony offense, in connection with the incident, but later pled

guilty to permitting drug abuse, a first degree misdemeanor offense, on the advice of counsel. Mr. Simmons also stated that even though the police contended they had a tape recording of the alleged drug transaction, no recording was ever introduced at the hearing. Lastly, Mr. Simmons advised the panel that the police searched his home during their investigation of the April 20, 2003 shooting, however they never discovered any drugs or drug paraphernalia at his home.

{¶ 3} Applicant's counsel stated that the claim should be allowed based upon the applicant's testimony and the Attorney General's lack of evidence to sufficiently prove that the applicant engaged in felonious conduct pursuant to former R.C. 2743.60(E)(3). Counsel argued that despite the applicant's arrest, there is no credible evidence to prove that the applicant had engaged in drug trafficking on March 31, 2003.

{¶ 4} The Assistant Attorney General continued to maintain that the applicant's claim should be denied pursuant to former R.C. 2743.60(E)(3). The Assistant Attorney General stated that the claim file contains sufficient information from law enforcement to prove that Richard Simmons engaged in drug trafficking on March 31, 2003. The Assistant Attorney General urged the panel to consider the applicant's history of arrests when determining the case and asserted that the applicant's testimony is untrustworthy and self serving.

{¶ 5} Former R.C. 2743.60(E)(3) states:

The Attorney General, a panel of commissioners, or a judge of the court of claims shall not make an award to a claimant if any of the following applies:

(3) It is proved by a preponderance of the evidence that the victim or the claimant engaged, within ten years prior to the criminally injurious conduct gave to the claim or during the pendency of the claim, in an offense of violence, a violation of section 2925.03

of the Revised Code, or any substantially similar offense that also would constitute a felony under the laws of this state, another state, or the United States.

{¶ 6} From review of the file and with full and careful consideration given to all the evidence presented at the hearing, this panel makes the following determination. We find that the Attorney General has failed to prove, by a preponderance of the evidence, that the applicant engaged in drug trafficking in order to deny the claim pursuant to former R.C. 2743.60(E)(3). The Attorney General failed to introduce sufficient evidence to rebut the applicant's testimony concerning the events of March 31, 2003. Therefore, the May 28, 2004 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for economic loss calculations and decision.

IT IS THEREFORE ORDERED THAT

{¶ 7} 1) The May 28, 2004 decision of the Attorney General is REVERSED and judgment is rendered in favor of the applicant;

{¶ 8} 2) This claim is remanded to the Attorney General for economic loss calculations and decision consistent with the panel's findings;

{¶ 9} 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;

{¶ 10} 4) Costs are assumed by the court of claims victims of crime fund.

THOMAS H. BAINBRIDGE
Commissioner

CLARK B. WEAVER, SR.
Commissioner

KARL H. SCHNEIDER
Commissioner

ID #\1-dld-tad-120804

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

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