

[Cite as *In re DiVincenzo*, 2006-Ohio-7328.]

**IN THE COURT OF CLAIMS OF OHIO  
VICTIMS OF CRIME DIVISION  
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IN RE RALPH DI VINCENZO,	:	
NANCY DI VINCENZO,	:	Case No. V2006-20356
MARIA MC GINTY,	:	
DANIEL O'NEILL, and	:	Case No. V2006-20364
JESSICA O'NEILL,	:	Case No. V2006-20372
Applicants.	:	<u>ORDER OF A THREE- COMMISSIONER PANEL</u>
	:	

{¶1} The applicants filed reparations applications seeking reimbursement of expenses incurred with respect to the July 30, 2005 murder of Ralph DiVincenzo (“decedent”). On December 27, 2005, the Attorney General denied the applicants’ claim pursuant to R.C. 2743.60(E) contending that at the time of the criminally injurious conduct the decedent had engaged in a felony violation of R.C. 2925.11, since the coroner’s toxicology report indicated that the decedent’s blood tested positive for the presence of cocaine. The Attorney General also denied the claim pursuant to R.C. 2743.60(E) because the decedent had been convicted of two felonies within ten years of the criminally injurious conduct. Furthermore, the Attorney General denied the minor

dependents' claim for dependent's economic loss pursuant to R.C. 2743.60(D) contending that the collateral source benefits, namely Social Security death benefits, that the children currently receive are in excess of the financial support previously provided by the decedent. On January 12, 2006, the applicants filed a request for reconsideration. On February 16, 2006, the Attorney General determined that the previous decision warranted no modification and denied the claim once again. On May 3, 2006, Nancy DiVincenzo ("Mrs. DiVincenzo" or "applicant"), the decedent's mother, filed a notice of appeal to the Attorney General's February 16, 2006 Final Decision. Hence, this matter was heard before this panel of three commissioners on July 27, 2006 at 9:55 A.M.

{¶2} Mrs. DiVincenzo, her attorney, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for the panel's consideration. Mrs. DiVincenzo briefly testified that she and her husband paid for their son's funeral, which cost approximately \$15,000.00. Mrs. DiVincenzo also stated that she had never been convicted of a felony nor had she ever engaged in any felonious conduct.

{¶3} Mrs. DiVincenzo's attorney argued that Mrs. DiVincenzo should not be penalized merely because her son's blood tested positive for the presence of cocaine at the time of his death. Counsel stated that the decedent's surviving family members should not be made to suffer additional injustice because of the decedent's illegal conduct. Counsel argued that it was not the intent of the General Assembly to deny

participation in the reparations fund to a victim's surviving family members who are not guilty of any wrongdoing themselves. Counsel argued that R.C. 2743.60(E) punishes the innocent, who eventually must bear the financial and psychological costs associated with the criminally injurious conduct. However, the Assistant Attorney General maintained that R.C. 2743.60(E) is clear on its face and therefore requested that the panel affirm the Attorney General's February 16, 2006 Final Decision. After a brief discussion of the claim, the panel chairman concluded the hearing.

**{¶4}** Revised Code 2743.60(E)(1) states:

“(E)(1) \* \* \* the attorney general, nor 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:

(a) The victim was convicted of a felony within ten years prior to the criminally injurious conduct that gave rise to the claim or is convicted of a felony during the pendency of the claim.”

**{¶5}** 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 this panel empathizes with the applicants over the loss of Ralph DiVincenzo, we are nevertheless bound to follow the law. Therefore, the February 16, 2006 decision of the Attorney General shall be affirmed.

Decision affirmed.

IT IS THEREFORE ORDERED THAT:

- 1) The February 16, 2006 decision of the Attorney General is AFFIRMED;
- 2) This claim is DENIED and judgment is rendered for the state of Ohio;
- 3) This order is entered without prejudice to the decedent's minor dependents' right to file a supplemental compensation application pursuant to R.C. 2743.68;
- 4) The Attorney General's August 14, 2006 motion to add an applicant is hereby GRANTED;
- 5) Samantha DiVincenzo is hereby added as an applicant to this claim;
- 6) The clerk shall note in the appearance docket and all appropriate indices that Samantha DiVincenzo is an applicant in this claim;
- 7) Costs are assumed by the court of claims victims of crime fund.

GREGORY P. BARWELL  
Commissioner

JAMES H. HEWITT III  
Commissioner

THOMAS H. BAINBRIDGE  
Commissioner