

# Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center

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IN RE: NAVARIO BANKS

Case No. V2008-30189

NAVARIO BANKS

Applicant

Commissioners:

Thomas H. Bainbridge, Presiding

Gregory P. Barwell

Randi Ostry LeHoty

ORDER OF A THREE-  
COMMISSIONER PANEL

{¶ 1} On October 19, 2006, the applicant, Navario Banks, filed a reparations application as the result of his truck being damaged by the actions of offenders fleeing after the commission of a felony which occurred on September 17, 2006. The applicant seeks reimbursement for the damage caused to his truck. On October 27, 2006, the Attorney General issued a Finding of Fact and Decision denying the applicant's claim for an award of reparations pursuant to R.C. 2743.60(E), since the applicant had been convicted of carrying a concealed weapon and trafficking offenses with school yard specifications, felonies of the fourth degree, on May 25, 2006. On November 9, 2006, the applicant submitted a request for reconsideration. On November 29, 2006, the Attorney General rendered a Final Decision finding there was no reason to modify his prior decision. On February 14, 2008, the applicant filed a notice of appeal from the Attorney General's November 29, 2006 Final Decision. On May 7, 2008 at 11:00 A.M., this matter was heard by this panel of three commissioners.

{¶ 2} The applicant and Assistant Attorney General Tara Paciorek attended the hearing and presented testimony and brief comments for the panel's consideration. Mr. Banks asserted that the felony exclusion unfairly discriminates against him. He contends that the application of the felony exclusion is tantamount to double jeopardy.

Assistant Attorney General Paciorek stated that R.C. 2743.60(E) is a mandatory provision and since the applicant has been convicted of a felony the panel has no choice but to deny the applicant's claim for an award of reparations.

{¶ 3} R.C. 2743.60(E)(1)(a) states:

(E) (1) Except as otherwise provided in division (E)(2) of this section, 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:

(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.

{¶ 4} The applicant was convicted of felonies on May 25, 2006, which is within ten years of the occurrence of the criminal conduct of September 17, 2006. "R.C. 2743.60(E), which restricts the eligibility of convicted felons to participate in the crime victims' compensation program, does not affect a fundamental right or create a suspect classification, and its constitutional validity under the Equal Protection Clause is therefore to be determined using the 'rational basis' test. R.C. 2743.60(E) is rationally related to the state's legitimate interest of ensuring that reparations awards be granted only to innocent, law-abiding victims of crime. The exclusion of felons pursuant to R.C. 2743.60(E) is not unconstitutional as a bill of attainder because the restriction does not inflict 'punishment', and it is based upon a status determined in a judicial, rather than legislative, proceeding" *In re Cowan* (1986), 27 Ohio Misc. 2d 12, 27 OBR 126, 499 N.E. 2d 937 paragraphs one, two and three of the syllabus.

{¶ 5} Finally, even if the felony exclusion did not apply in this case the applicant would still not be eligible to receive an award of reparations since he was not a victim of criminally injurious conduct. R.C. 2743.51(C)(1) defines criminally injurious conduct as “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 . . .” In the case at bar, the applicant was not in the truck at the time of the criminal incident and by his own admission suffered no personal injury as the result of the collision.

{¶ 6} Finally, property loss, in this case the applicant’s truck, is not compensable under the program. See *In re Davis*, V79-3565jud (6-23-81); *In re Kennedy*, V78-3322jud (8-17-79); and *In re White*, V80-31706jud (4-2-81).

{¶ 7} From review of the file and with full consideration given to all the information presented at the hearing, we find that the applicant does not qualify for an award of reparations since he was not a victim of criminally injurious conduct, he seeks an award for property loss only and he falls within the perimeter of the felony exclusion contained in R.C. 2743.60(E)(1)(a). Therefore, the November 29, 2006 decision of the Attorney General is affirmed.

{¶ 8} IT IS THEREFORE ORDERED THAT

{¶ 9} 1) The November 29, 2006 decision of the Attorney General is AFFIRMED;

{¶ 10} 2) This claim is DENIED and judgment is rendered for the state of Ohio;

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

[Cite as *In re Banks*, 2008-Ohio-4266.]

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THOMAS H. BAINBRIDGE  
Presiding Commissioner

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GREGORY P. BARWELL  
Commissioner

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RANDI OSTRY LE HOTY  
Commissioner

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

Filed 7-2-2009

Jr. Vol. 2269, Pg.22

To S.C. Reporter 8-20-2008