

# Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
www.cco.state.oh.us

WILLIAM C. WALKER

Plaintiff

v.

THE STATE OF OHIO

Defendant

Case No. 2008-07624-WI

Judge Clark B. Weaver Sr.

## DECISION

{¶ 1} On June 25, 2008, plaintiff filed a claim for wrongful imprisonment pursuant to R.C. 2743.48. On July 24, 2008, the parties filed a proposed settlement agreement.<sup>1</sup> Civ.R. 12(H)(3) states: “[W]henever it appears by suggestion of the parties

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<sup>1</sup>R.C. 2743.15 provides in relevant part:

“(A) The director or other administrative chief, or the governing body, of any department, board, office, commission, agency, institution, or other instrumentality of the state, *with the approval of the attorney general and the court of claims*, may settle or compromise any civil action against the state insofar as the department, board, office, commission, agency, institution, or other instrumentality is named as a defendant.” (Emphasis added.)

C.C.R. 7 provides in part:

“(A) Pursuant to R.C. § 2743.15, a claimant and the state may execute an agreement to settle a claim filed in the court of claims. \* \* \*

“(B) The court shall review the settlement agreement. If the court concurs with the terms of the settlement agreement, it shall approve and journalize the agreement. If the settlement agreement is not approved, the court may require the claimant and the state to reconsider the agreement. If the court does not approve the reconsidered agreement, the court shall assign the claim for trial.”

or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.” Upon review of the materials contained in the case file, the court finds that it lacks jurisdiction over plaintiff’s claim.

{¶ 2} R.C. 2305.02 provides, in part, as follows:

{¶ 3} “A court of common pleas has exclusive, original jurisdiction to hear and determine an action or proceeding that is commenced by an individual who satisfies divisions (A)(1) to (4) of section 2743.48 of the Revised Code *and that seeks a determination by the court that the offense of which he was found guilty, including all lesser-included offenses, either was not committed by him or was not committed by any person.*” (Emphasis added.)

{¶ 4} Once the claimant secures such determination, R.C. 2743.48(D) provides that plaintiff “has and may file a civil action against the state, in the court of claims, to recover a sum of money in an amount fixed by R.C. 2743.48(E).” *Walden v. State* (1989), 47 Ohio St.3d 47, 50.

{¶ 5} This court has dismissed an inmate’s wrongful imprisonment action where the inmate failed to show that he had first obtained a determination from a court of common pleas that he was a wrongfully imprisoned individual. In *Norris v. Ohio Dep’t of Rehab. & Corr.*, Ct. of Cl. No. 2004-07824, 2005-Ohio-3959, Judge Clark stated the following: “[I]n order to prevail on a claim for wrongful imprisonment in Ohio, plaintiff is required to follow the statutory procedures set forth in R.C. 2743.48(A)(4) and 2305.02. Specifically, plaintiff must first obtain a determination from a court of common pleas that he is a wrongfully imprisoned individual before filing an action in this court. Plaintiff has presented no evidence that he has obtained such a determination. Therefore, defendants are entitled to judgment as a matter of law as to plaintiff’s claim for wrongful imprisonment.” *Id.* at ¶8, affirmed Franklin App. No. 05AP-762, 2006-Ohio-1750.

{¶ 6} On November 23, 2004, a judge of the Stark County Court of Common Pleas found the following in regard to plaintiff in this case:

{¶ 7} “1. That prior counsel was aware of [an] alibi defense and information from the first time that he met the Defendant/Petitioner, but failed to conduct a further investigation and/or to plead and provide such an alibi defense at trial;

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{¶ 8} “2. that the evidentiary documents submitted herein contemporaneously with this Petition provide sufficient, operative facts to demonstrate that counsel failed in his duty and that the Defendant/Petitioner was prejudiced by counsel’s ineffectiveness;

{¶ 9} “3. a presentation of this alibi defense and evidence would by clear and convincing evidence create a circumstance where no reasonable fact finder could have found the Defendant/Petitioner guilty of the offense for which he was convicted; and

{¶ 10} “4. although, a hearing was not held within the time frame required by Ohio Revised Code, Section 2953.21, the Court does hereby specifically find that the petition [sic] was unavoidably prevented from discovery of the facts upon which the Petitioner relies upon to present the claim for relief, and that *Petitioner has shown by clear and convincing evidence that, but for the constitutional error at trial, no reasonable fact finder would have found the Petitioner guilty of the offense for which the Petitioner was convicted.*” (Emphasis added.)

{¶ 11} On February 24, 2005, the Stark County Court of Common Pleas issued a journal entry in which it stated “the Court finds from the evidence that the Defendant is Not Guilty as charged in the Indictment.” Plaintiff thereafter commenced a proceeding in the Stark County Court of Common Pleas pursuant to R.C. 2305.02. After a mediation, that court issued an agreed entry on June 13, 2008, wherein it was found that plaintiff “satisfies the criteria set forth in R.C. §2743.48(A)(1)-(5), and therefore, is a ‘wrongfully imprisoned individual’ as that term is defined and used in R.C. §§2305.02 and 2743.48, et seq.” The agreed entry was signed by a judge of the court of common pleas, by plaintiff’s attorney, and by two assistant attorneys general, one from the corrections litigation section and the other from the court of claims defense section.

{¶ 12} R.C. 2743.48 states, in relevant part:

{¶ 13} “(A) As used in this section and section 2743.49 of the Revised Code, a ‘wrongfully imprisoned individual’ means an individual who satisfies each of the following:

{¶ 14} “(1) The individual was charged with a violation of a section of the Revised Code by an indictment or information prior to, or on or after, September 24, 1986, and the violation charged was an aggravated felony or felony.

{¶ 15} “(2) The individual was found guilty of, but did not plead guilty to, the particular charge or a lesser-included offense by the court or jury involved, and the offense of which the individual was found guilty was an aggravated felony or felony.

{¶ 16} “(3) The individual was sentenced to an indefinite or definite term of imprisonment in a state correctional institution for the offense of which the individual was found guilty.

{¶ 17} “(4) The individual's conviction was vacated or was dismissed, or reversed on appeal, the prosecuting attorney in the case cannot or will not seek any further appeal of right or upon leave of court, and no criminal proceeding is pending, can be brought, or will be brought by any prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation against the individual for any act associated with that conviction.

{¶ 18} “(5) Subsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual's release, or it was determined by a court of common pleas that the offense of which the individual was found guilty, including all lesser-included offenses, either was not committed by the individual or was not committed by any person.”

{¶ 19} The court finds that the documentation submitted by the parties satisfies the requirements of R.C. 2743.48(A)(1)-(3). However, the court further finds that the parties have failed to present sufficient evidence pursuant to R.C. 2743.48(A)(4) that “the prosecuting attorney in the case cannot or will not seek any further appeal of right or upon leave of court, and no criminal proceeding is pending, can be brought, or will be brought by any prosecuting attorney \* \* \*” against plaintiff “for any act associated with that conviction.” The agreed entry contains no such representation and was not agreed to by the prosecuting attorney.

{¶ 20} Moreover, the court finds that pursuant to R.C. 2305.02, the parties have not demonstrated that plaintiff has sought a determination by the court of common pleas that the offense of which he was found guilty, including all lesser-included offenses, either was not committed by him or was not committed by any person. Although the common pleas court found that plaintiff had shown by clear and convincing evidence that, but for the constitutional error at trial, no reasonable fact finder would have found

him guilty of the offense for which he was convicted, the record does not evidence a determination by the court of common pleas that the offense of which plaintiff was found guilty, including all lesser-included offenses, either was not committed by him or was not committed by any person.

{¶ 21} “[A] previous finding of *not guilty* is not sufficient to establish *innocence*. The petitioner seeking to establish a claim for wrongful imprisonment must produce more evidence than a judgment of acquittal, which is merely a judicial finding that the state did not prove its case beyond a reasonable doubt.” *Brown v. State*, Lucas App. No. L-05-1050, 2006-Ohio-1393, at ¶19. (Emphasis sic.)

{¶ 22} In addition, this court has found no statutory or other authority that would authorize the Attorney General to enter an appearance in a court of common pleas in the purported capacity of a prosecuting attorney in an action or proceeding under R.C. 2305.02.

{¶ 23} In sum, inasmuch as the record lacks an entry from the Stark County Court of Common Pleas containing both: 1) a finding by the court of common pleas that the offense of which plaintiff was found guilty, including all lesser-included offenses, either was not committed by him or was not committed by any person; and, 2) a signed statement from the local prosecuting attorney stating that such authority cannot or will not seek any further appeal of right or upon leave of court, and no criminal proceeding is pending, can be brought, or will be brought by any prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation against the individual for any act associated with that conviction, the court finds that it lacks jurisdiction over this action.

{¶ 24} Accordingly, the fairness and advisability of the settlement agreement is not properly before this court.<sup>2</sup> Plaintiff’s claim shall be dismissed for lack of subject matter jurisdiction.

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<sup>2</sup>See *Giancola v. State* (Dec. 30, 1982), Franklin App. Nos. 82AP-480; 82AP-675; 82AP-712. See also *Giancola v. State* (Mar. 28, 1985), Franklin App. No. 84AP-899. (“The trial court carefully and succinctly explained its reasons for failing to approve the settlement agreement and we find no abuse of discretion by the trial court in not approving said settlement.”)



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## JUDGMENT ENTRY

For the reasons set forth in the decision filed concurrently herewith, plaintiff's complaint is DISMISSED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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CLARK B. WEAVER SR.  
Judge

cc:

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HTS/cmd  
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