

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

BROCK HENLY

Plaintiff

v.

STATE OF OHIO

Defendant

Case No. 2008-07250-WI

Judge Clark B. Weaver Sr.

DECISION

{¶ 1} On June 17, 2008, plaintiff filed a claim for wrongful imprisonment pursuant to R.C. 2743.48. Civ.R. 12(H)(3) states: “[W]henever it appears by suggestion of the parties 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} According to his complaint, plaintiff was incarcerated for more than 20 months at various points in time between May 2003 and June 2006 for multiple charges of failure to report, a violation of R.C. 2950.06. On September 18, 2007, the indictment against plaintiff was dismissed at the request of the prosecuting attorney. On September 26, 2007, plaintiff commenced an action in the Hamilton County Court of Common Pleas pursuant to R.C. 2305.02. On May 28, 2008, the court of common pleas issued an agreed entry wherein it found that “[u]pon agreement of the parties, it is hereby determined that Plaintiff Brock Henly is a ‘wrongfully imprisoned individual,’ as that term is defined in Section 2743.48 of the Ohio Revised Code, in Hamilton County Common Pleas Case #B0304766.” The entry was signed by a judge of the court of common pleas, by plaintiff’s attorney, and by a prosecuting attorney.

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

{¶ 8} “(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:

{¶ 9} “(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.

{¶ 10} “(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.

{¶ 11} “(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.

{¶ 12} “(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.

{¶ 13} “(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.”

{¶ 14} 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 even though the indictment against plaintiff was dismissed at the request of the prosecuting attorney, 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 the court cannot, merely by implication, infer that plaintiff meets such statutory requirement based upon the documentation submitted.

{¶ 15} Moreover, the court finds that pursuant to R.C. 2305.02, the parties have not demonstrated that plaintiff has obtained 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.

{¶ 16} “[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.)

{¶ 17} The record is devoid of any entry from the Hamilton County Court of Common Pleas that contains: 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) an assurance, in writing, from a prosecuting attorney that comports with the language found in R.C. 2743.48(A)(4). Therefore, the court finds that it lacks jurisdiction over this action. Accordingly, plaintiff’s claim shall be dismissed for lack of subject matter jurisdiction.

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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.

CLARK B. WEAVER SR.
Judge

cc:

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HTS/cmd
Filed December 8, 2008
To S.C. reporter January 20, 2009