



Court of Claims of Ohio

Victims of Crime Division

The Ohio Judicial Center
65 South Front Street, Fourth Floor
Columbus, OH 43215
614.387.9860 or 1.800.824.8263
www.cco.state.oh.us

IN RE: H. D.

JEFFERY DUNN

MELINDA DUNN

Applicants

Case No. V2008-30383

Judge Joseph T. Clark

DECISION

{¶1} This matter came on to be considered upon the applicants' appeal from the February 13, 2009 order issued by the panel of commissioners. The panel's determination affirmed the final decision of the Attorney General, which denied applicants' claim for an award of reparations based upon the finding that applicants failed to prove that H. D. was a victim of criminally injurious conduct.

{¶2} R.C. 2743.52(A) places the burden of proof on an applicant to satisfy the Court of Claims Commissioners that the requirements for an award have been met by a preponderance of the evidence. *In re Rios* (1983), 8 Ohio Misc.2d 4, 8 OBR 63, 455 N.E.2d 1374. The panel found, upon review of the evidence, that applicants failed to present sufficient evidence to meet their burden.

{¶3} The standard for reviewing claims that are appealed to the court is established by R.C. 2743.61(C), which provides in pertinent part: "If upon hearing and consideration of the record and evidence, the judge decides that the decision of the panel of commissioners is unreasonable or unlawful, the judge shall reverse and vacate

the decision or modify it and enter judgment on the claim. The decision of the judge of the court of claims is final.”

{¶4} Applicants assert that H. D., who was a high school student at the time of the incident, was inappropriately touched by one of her teachers in violation of R.C. 2907.06, which sets forth the offense of sexual imposition, and provides in part:

“(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

“* * *

“(4) The other person, or one of the other persons, is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of such person, and the offender is at least eighteen years of age and four or more years older than such other person.”

{¶5} According to applicants, the panel’s determination that applicants failed to prove that H. D. was a victim of criminally injurious conduct was unreasonable and unlawful. Specifically, applicants assert that “[a]ll the victim had to do was to prove, by a preponderance of the evidence, that the contact occurred.” The court disagrees.

{¶6} R.C. 2907.01(B) states:

“(B) ‘Sexual contact’ means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.”

{¶7} The Revised Code does not define sexual arousal or gratification and the trier of fact must infer from the evidence presented whether the purpose of the alleged offender was sexual arousal or gratification by his contact with the alleged victim. *State v. Kring*, Franklin App. No. 07AP-610, 2008-Ohio-3290, ¶ 35, citing *State v. Cobb* (1991), 81 Ohio App.3d 179. In *Kring*, the Tenth District Court of Appeals found that

“there is no requirement that there be direct testimony as to sexual arousal or gratification”; however, “there must be some evidence of sexual gratification as the purpose for touching a described area.” Id. at ¶ 37. “In making its decision the trier of fact may consider the type, nature and circumstances of the contact.” Id. at ¶ 35.

{¶8}The panel found that the statements made by student witnesses “raised substantial doubt about H. D.’s assertion that the touching was intentional.” The panel further found that testimony regarding the teacher’s actions was not adequate to demonstrate corroboration of an unlawful touching. Upon consideration of the testimony and evidence, the panel concluded that applicants had not met their burden of proving that the incident constituted criminally injurious conduct.

{¶9}Upon review of the file in this matter, including the type, nature, and circumstances of the alleged contact, the court finds that the panel could have reasonably found that there was insufficient evidence to prove that any contact between the alleged offender and H. D. was for purposes of sexual stimulation for gratification. The court will not substitute its judgment for that of the trier of fact. Accordingly, the court finds that the panel of commissioners was not arbitrary in finding that applicants did not show by a preponderance of the evidence that they were entitled to an award of reparations.

{¶10}Based on the evidence and R.C. 2743.61, it is the court’s opinion that the decision of the panel of commissioners was reasonable and lawful. Therefore, this court affirms the decision of the three-commissioner panel, and hereby denies applicants’ claim.

JOSEPH T. CLARK
Judge



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ORDER

{¶11} Upon review of the evidence, the court finds the order of the panel of commissioners must be affirmed and the applicants' appeal must be denied.

IT IS HEREBY ORDERED THAT:

{¶12}1) The order of February 13, 2009, (Jr. Vol. 2271, Pages 71-72) is approved, affirmed and adopted;

{¶13}2) This claim is DENIED and judgment entered for the State of Ohio;

{¶14}3) Costs assumed by the reparations fund.

JOSEPH T. CLARK
Judge

AMR/cmd

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

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