

Court of Claims of Ohio

Victims of Crime Division

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

IN RE: MEGAIL HARRIS

MEGAIL HARRIS

Applicant

Case No. 2013-00175-VI

Judge Patrick M. McGrath

DECISION

{¶1} This matter came to be considered upon the Attorney General's appeal from the November 15, 2013 order issued by the panel of commissioners. The panel's determination reversed the final decision of the Attorney General, which denied applicant's claim for an award of reparations based upon a finding that applicant was adjudicated delinquent on a felony burglary charge, on September 18, 2006. However, the panel determined that the offense for which applicant was adjudicated was not an "offense of violence" under former R.C. 2743.60(E)(1)(c), and that applicant was not barred from an award of reparations. The Attorney General appealed. Assistant Attorney General Melissa Montgomery appeared at the hearing on behalf of the state of Ohio. Attorney Carl McMahon and applicant appeared via video conference from the Cleveland Attorney General's office.

{¶2} This case arises out of an incident in which applicant was shot during a robbery that occurred on November 3, 2012. On November 19, 2012, applicant filed a compensation application for reimbursement of expenses he incurred as a result of being shot. The Attorney General issued a finding of fact and decision denying applicant's claim for an award of reparations. Such a decision was based upon applicant's adjudication of delinquency under former R.C. 2911.12(A)(1) on September 18, 2006.

After applicant submitted a request for reconsideration, the Attorney General issued a final decision determining that there was no reason to modify its original decision.

{¶3} Former 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*, 8 Ohio Misc.2d 4, 455 N.E.2d 1374 (1983). The Attorney General has the burden with respect to proof of the exclusionary criteria contained in former R.C. 2743.60(E). *In re Williams*, Ct. of Cl. No. V77-0739 (March 21, 1979); *In re Brown*, Ct. of Cl. No. V78-3638 (December 13, 1979).

{¶4} The panel found upon review of the evidence that the Attorney General failed to cite any authority to support his contention that burglary under former R.C. 2911.12(A)(1) is an “offense of violence.” Therefore, the panel concluded that the offense for which applicant was adjudicated delinquent was not an “offense of violence” and that applicant is not foreclosed from an award of reparations pursuant to former R.C. 2743.60(E)(1)(c).

{¶5} The standard for reviewing claims that are appealed to the court is established by former 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.”

{¶6} The Attorney General contends that the decision of the panel of commissioners is unreasonable and unlawful inasmuch as applicant was adjudicated delinquent pursuant to former R.C. 2911.12(A)(1) and that such a crime is classified as an “offense of violence” under former R.C. 2901.01(A)(9)(a). Thus, the Attorney General concludes that applicant is not eligible for an award of reparations. Applicant does not dispute that he was adjudicated delinquent under former R.C. 2911.12(A)(1). However, applicant maintains that former R.C. 2911.12(A)(1) is a crime of trespass and not an “offense of violence.” Applicant further maintains that he was not convicted of a felony inasmuch as he was a juvenile at the time of the offense and that no offense of violence occurred.

{¶7} Former R.C. 2743.60 provides, in pertinent part:

{¶8} “(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:

{¶9} “(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.

{¶10} “* * *

{¶11} “(c) It is proved by a preponderance of the evidence that the victim or the claimant engaged, within ten years prior to the criminally injurious conduct that gave rise to the claim or during the pendency of the claim, *in an offense of violence*, a violation of section 2925.03 of the Revised Code, or any substantially similar offense that also would constitute a felony under the laws of this state, another state, or the United States.” (Emphasis added.)

{¶12} The sole question on appeal is whether former R.C. 2911.12(A)(1) is an “offense of violence.” No other issues have been appealed by either party. Therefore, this court’s review of the decision of the panel of commissioners is limited to the question presented by the Attorney General.

{¶13} Former R.C. 2911.12, which was in effect in September 2006, provides, in part:

{¶14} “(A) No person, by force, stealth, or deception, shall do any of the following:

{¶15} “(1) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender is present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense;

{¶16} “(2) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure that is a permanent or temporary habitation of any person when any person other than an accomplice of the offender is present or likely to be present, with purpose to commit in the habitation any criminal offense;

{¶17} “* * *

{¶18} “(C) Whoever violates this section is guilty of burglary. A violation of division (A)(1) or (2) of this section is a felony of the second degree.”

{¶19} Former R.C. 2901.01, which was in effect in September 2006, provides:

{¶20} “(9) ‘Offense of violence’ means any of the following:

{¶21} “(a) A violation of section 2903.01 * * * [or] of division (A)(1), (2), or (3) of section 2911.12 * * *.”

{¶22} Accordingly, the General Assembly has expressly categorized a violation of former R.C. 2911.12(A)(1) as an “offense of violence.” There is no dispute that applicant was adjudicated delinquent under former R.C. 2911.12(A)(1). Therefore, the Attorney General has met his burden of proof with respect to the exclusionary criterion contained in former R.C. 2743.60(E)(1)(c).

{¶23} Applicant argues that he was never “convicted” of a felony under former R.C. 2911.12(A)(1) inasmuch as he was a juvenile at the time of the crime. It is true that applicant was never “convicted” of a “felony” under R.C. 2911.12(A)(1). However, in the juvenile justice system, a child accused of a criminal offense is not found “guilty” as an adult would be in the criminal justice system; rather, a child is “adjudicated delinquent.” *State v. Hanning*, 89 Ohio St.3d 86, 89 (2000). As stated above, there is no dispute that applicant was adjudicated delinquent under R.C. 2911.12(A)(1), and the General Assembly has categorized such a crime as an “offense of violence.” Moreover, this court has stated that while a juvenile cannot be convicted of a felony, a juvenile’s conduct can be considered felonious. *In re Bradley*, 95 Ohio Misc.2d 43 (1998); *In re Miller*, 91 Ohio Misc.2d 135 (1996). Furthermore, former R.C. 2743.60(E) does not differentiate between juveniles and adults with respect to the exclusionary criteria contained therein.

{¶24} Accordingly, the court concludes that the decision of the panel of commissioners was unreasonable and unlawful. Therefore, the court reverses the decision of the panel of commissioners and hereby denies applicant’s claim.

PATRICK M. MCGRATH
Judge

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ORDER

Upon review of the evidence, the court finds that the order of the panel of commissioners must be reversed and the applicant's appeal must be denied.

IT IS HEREBY ORDERED THAT:

- 1) The order of November 15, 2013, (Jr. Vol. 2287, Pages 8-12) is REVERSED;
- 2) The claim is DENIED and judgment is rendered for the state of Ohio;
- 3) Costs assumed by the reparations fund.

PATRICK M. MCGRATH
Judge

Filed 7/30/14
Sent to S.C. reporter 3/1/17