[Cite as *Beckwith v. State*, 2015-Ohio-1030.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101695

GREGORY E. BECKWITH

PLAINTIFF-APPELLANT

vs.

STATE OF OHIO

DEFENDANT-APPELLEE

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-13-811154

BEFORE: Boyle, J., McCormack, P.J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: March 19, 2015

ATTORNEY FOR APPELLANT

Terry H. Gilbert
Friedman & Gilbert
Attorneys at Law
55 Public Square, Suite 1055
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
BY: Brian R. Gutkoski
Assistant County Prosecutor
Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

MARY J. BOYLE, J.:

{¶1} Plaintiff-appellant, Gregory Beckwith, appeals from a decision granting summary judgment in favor of defendant-appellee, state of Ohio, as to his complaint for wrongful imprisonment brought pursuant to R.C. 2743.48. He raises one assignment of error for our review, namely, that "[t]he trial court erred in finding that [he] failed to meet the provisions of R.C. 2743.48." Finding merit to his appeal, we reverse and remand to the trial court for further proceedings.

Procedural History and Factual Background

{¶2} The following facts and procedural history were set forth in *State v. Beckwith*, 8th Dist. Cuyahoga No. 98497, 2013-Ohio-492, ¶ 2-8:

> In December 2011, Beckwith was charged with menacing by stalking, with Ashia Benson ("Benson") named as the victim. The charge carried a furthermore specification that Beckwith trespassed on the land or premises where Benson "lives, is employed, or attends school." The matter proceeded to a bench trial, at which the following evidence was adduced.
>
> Benson testified that she was hired as a "page" at the Cleveland Public Library in March 2011. Her typical duties included showing and shelving books. Benson further testified that when she first started working at the library she was advised that "people come up there because some of them crazy, some of them creepy, but they not really. It's just how they are. It's not like they going to do anything to you."
>
> Benson first met Beckwith in late May or early June 2011. At first, she noticed that Beckwith "was everywhere [she] was." She explained that when she was shelving books on a particular floor she would observe Beckwith. Beckwith would then follow her when she proceeded to a different floor. Benson testified that this pattern became common, about three times a week. Benson realized that these encounters were not coincidences when he started making grunting noises at her every time she walked by him. Benson reported these encounters to her supervisors and other coworkers.
>
> Benson testified that she first reported an incident sometime between May and November 2011 where Beckwith asked her to locate a specific book for him. She gave the book to him and watched him walk downstairs, put the book on the table, and walk away. Another time, Beckwith approached Benson while she was shelving books and asked her to help him download a song on his cell phone. On a third occasion, Benson testified that she believed Beckwith was filming her

with his cell phone as she walked through the library.

As a result of these incidents, Cleveland Public Library Security Guard Christopher Flak ("Flak") advised Beckwith on October 18, 2011, that he was no longer permitted at the library. Flak testified that Beckwith "complied and left." Benson testified that Beckwith did not return to the library after that, but she did have two encounters with him near the Hyatt Hotel at The Arcade directly across the street from the library. During the first encounter, she observed Beckwith outside of the library where the bus drops her off in the morning before work. During the second encounter, on November 16, 2011, Beckwith followed Benson as she was walking into the entrance of The Arcade. Benson noticed Beckwith's reflection behind her in the glass door. She turned around and observed Beckwith with his cell phone pointed toward her buttocks. Benson stated that these incidents made her feel uncomfortable and "creeped out." At work, her heart would beat fast when someone walked past her. Her coworker, Aja Russo, testified that she never observed Beckwith follow Benson. Benson's supervisor testified that she observed Beckwith around Benson on two occasions. On both occasions, he was in the same area as Benson, but he did not interact with her. Her supervisor further testified that as a result of these incidents, they moved her to shelve in a different area.

Benson testified that in the 13 months that she has been working at the library she has made complaints about other people. She has encountered numerous people who come into the library and "follow people and make people feel uncomfortable." Benson recalled one incident where she heard a man unzipping his pants a few aisles away from her. Another time, a man with "creepy hair" unzipped his pants while he looked at her through the book stacks.

At the conclusion of trial, the court found Beckwith guilty. The court then sentenced him to 17 months in prison. The court also ordered that Beckwith pay a $500 fine.

{¶3} Beckwith appealed his convictions, arguing in relevant part that his menacing by stalking conviction, as well as the furthermore clause that he was trespassing "on the land or premises where the victim lives, is employed, or attends school," was not supported by sufficient evidence. This court agreed and vacated his conviction. We found that the evidence was not sufficient to establish that Beckwith "knowingly caused Benson mental distress or physical harm as required by R.C. 2903.211(A)(1)," nor was the evidence sufficient to establish that Beckwith trespassed where Benson worked because the library was a public place, where Beckwith "had

every right" to be. *Beckwith* at ¶ 17- 18.

{¶4} The state appealed this court's decision to the Ohio Supreme Court, but the high court declined jurisdiction on June 5, 2013. *See State v. Beckwith*, 135 Ohio St.3d 1461, 2013-Ohio-2285, 988 N.E.2d 580. On July 8, 2013, the trial court dismissed the case against Beckwith and ordered him to be released.

{¶5} On July 24, 2013, Beckwith filed a complaint against the state, seeking a declaratory judgment that he was wrongfully imprisoned. The state moved for summary judgment on January 14, 2014, which Beckwith opposed. The trial court granted the state's motion on June 16, 2014. It is from this judgment that Beckwith appeals.

Standard of Review

{¶6} An appellate court reviews a decision granting summary judgment on a de novo basis. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Summary judgment is properly granted when: (1) there is no genuine issue as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and, (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made. Civ.R. 56(C); *State ex rel. Duganitz v. Ohio Adult Parole Auth.*, 77 Ohio St.3d 190, 191, 672 N.E.2d 654 (1996).

R.C. 2743.48

{¶7} "The wrongful-imprisonment statute, R.C. 2743.48, was added to the Revised Code in 1986 by Sub.H.B. No. 609 to authorize civil actions against the state, for specified monetary amounts, in the Court of Claims by certain wrongfully imprisoned individuals." *Doss v. State*, 135 Ohio St.3d 211, 2012- Ohio-5678, 985 N.E.2d 1229, ¶ 10. "The statute was designed to replace the former practice of compensating those wrongfully imprisoned by ad hoc

moral-claims legislation." *Id.*, citing *Walden v. State*, 47 Ohio St.3d 47, 49, 547 N.E.2d 962 (1989). The high court explained that when the General Assembly enacted the current statutory scheme, it "intended that the court of common pleas actively separate those who were wrongfully imprisoned from those who have merely avoided criminal liability." *Walden* at 52.

{¶8} "The Ohio Revised Code provides a two-step process whereby a person claiming wrongful imprisonment may sue the state for damages incurred due to the alleged wrongful imprisonment." *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 72, 701 N.E.2d 1002 (1998), citing *Walden*. The first action, in the common pleas court, seeks a preliminary factual determination of wrongful imprisonment. *Id*. The second action, in the court of claims, provides for damages. *Id*.

{¶9} A "wrongfully imprisoned individual" is defined in R.C. 2743.48(A) as an individual who satisfies each of the following requirements:

> (1) The individual was charged with a violation of a section of the Revised Code by an indictment or information, and the violation charged was an aggravated felony or felony.
>
> (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.
>
> (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.
>
> (4) The individual's conviction was vacated, 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.
> (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 the court of common pleas in the county where the underlying criminal action was initiated that the charged offense, including all lesser-included offenses, either was not

committed by the individual or was not committed by any person.

{¶10} The statute enumerates five factors that a claimant must satisfy by a preponderance of the evidence before he or she can be declared a wrongfully imprisoned individual. *Dunbar v. State*, 136 Ohio St.3d 181, 2013-Ohio-2163, 992 N.E.2d 1111, citing *Doss*, 135 Ohio St.3d 211, 2012- Ohio-5678, 985 N.E.2d 1229, at paragraph one of the syllabus. Turning to the instant case, it is undisputed that Beckwith meets the first three prongs of the statute. In its summary judgment motion, the state argued that Beckwith could not establish the fourth prong of the wrongful imprisonment statute, R.C. 2743.48(A)(4), and therefore, it was entitled to summary judgment as a matter of law (the state did not address the fifth prong of R.C. 2743.48). Specifically, the state argued that because Beckwith could not "prove by a preponderance of the evidence that he 'was not engaging in any other criminal conduct arising out of the incident,'" he could not be adjudicated a wrongfully imprisoned person. The state raises the same argument here as it did below.

{¶11} In support of its argument, the state relies heavily on *Gover v. State*, 67 Ohio St.3d 93, 616 N.E.2d 207 (1993). In *Gover*, the claimant had been charged and convicted of safecracking for events that took place on September 13, 1988. On that date, Gover entered a restaurant and proceeded to remove "coins, costume jewelry, [and] foreign currency" from a locked restaurant display case, which resembled a safe. *State v. Gover*, 67 Ohio App.3d 384, 385, 587 N.E.2d 321 (1st Dist.1990). The restaurant manager had seen Gover with bulging pockets, became suspicious, and informed a police officer who then pursued Gover as he was fleeing. The officer saw Gover empty items out of his pockets as he was running. The items from Gover's pockets were later recovered and were identified by the restaurant manager as items that were missing from the locked display case at the restaurant. *Id.*

{¶12} The court of appeals reversed the conviction because it determined that the state did not prove the existence of an actual safe or vault. *Id.* at 386. Thus, the court held that the state had failed to prove all of the elements of the crime of safecracking of which Gover had been convicted. *Id.*

{¶13} Gover subsequently filed a declaratory action seeking adjudication as a wrongfully imprisoned individual. *See Gover v. State*, 1st Dist. Hamilton No. 910314, 1992 Ohio App. LEXIS 1329, *2-3 (Mar. 25, 1992). The trial court determined that Gover had been wrongfully imprisoned. *Id.* at *3. The First District affirmed the trial court's decision. *Id.* The state appealed to the Supreme Court, which accepted the case for review. *See Gover v. State*, 65 Ohio St.3d 1410, 598 N.E.2d 1164 (1992).

{¶14} In interpreting R.C. 2743.48(A)(4), the Supreme Court explained:

> The requirement that "no criminal proceeding * * * can be brought * * * against the individual for any act associated with that conviction" is of critical importance. This statutory language is intended to filter out those claimants who have had their convictions reversed, but were committing a different offense at the time that they were engaging in the activity for which they were initially charged. When the General Assembly enacted Ohio's wrongful imprisonment legislation, it "intended that the court of common pleas actively separate those who were wrongfully imprisoned from those who have merely avoided criminal liability." *Walden v. State*, 47 Ohio St.3d 47, 52, 547 N.E.2d 962, 967 (1989).
>
> Thus, claimants seeking compensation for wrongful imprisonment must prove that at the time of the incident for which they were initially charged, they were not engaging in any other criminal conduct arising out of the incident for which they were initially charged. The claimant must prove this element of the claim by a preponderance of the evidence, as required by *Walden v. State*, *supra*.

Gover, 67 Ohio St.3d at 95, 616 N.E.2d 207.

{¶15} The Supreme Court reversed the First District, reasoning that "Gover, while not committing the offense of safecracking with respect to his conduct on September 13, 1988, was nevertheless committing other criminal offenses during his visit to [the restaurant]." *Id.* at 96.

It further explained that "[w]hile the prosecutor * * * incorrectly chose to seek an indictment alleging safecracking, it appears that [Gover] might also have been charged with burglary under R.C. 2911.12, a second-degree felony." *Id.* Finding that the record was devoid of any evidence that the trial court considered whether Gover committed other offenses, the Supreme Court remanded to the trial court for it to determine whether Gover had committed offenses other than safecracking on the date of the alleged criminal conduct. *Id.*

{¶16} The definition of a wrongfully imprisoned individual, however, has changed since *Gover* was decided in 1993. *James v. State*, 2d Dist. Clark No. 2013-CA-28, 2014-Ohio-140, ¶ 15. At the time of *Gover*, the definition of a wrongfully imprisoned individual included only those individuals who could prove actual innocence of the offenses, including any lesser included offenses. *See* former version of R.C. 2743.48(A)(5).[1] "The *Gover* court's interpretation of R.C. 2743.48(A)(4) was made in that context." *McClain v. State*, 10th Dist. Franklin No. 13AP-427, 2014-Ohio-1711, ¶ 13.

{¶17} But in 2003, the General Assembly amended the definition of a "wrongfully imprisoned individual" to include individuals who could not establish actual innocence but who were released from prison as the result of an error in procedure. *McClain* at ¶ 14, citing R.C. 2743.48(A)(5). The change "expanded the criteria by which a claimant could establish that he or she is a wrongfully imprisoned individual." *Griffith v. Cleveland*, 128 Ohio St.3d 35, 2010-Ohio-4905, 941 N.E.2d 1157, ¶ 21. In other words, a claimant no longer had to prove actual innocence in order to satisfy (A)(5). In light of this statutory change, the Tenth District

[1]Former R.C. 2743.48(A)(5) provided that: "Subsequent to his sentencing and during or subsequent to imprisonment, it was determined by a 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."

has explained that "the 'observations' and 'comments' in *Gover* regarding the meaning of R.C. 2743.48(A)(4) 'simply cannot prevail over contradictory text in the current version of the statute.'" *McClain* at ¶ 14, quoting *Hill v. State*, 10th Dist. Franklin No. 12AP-635, 2013-Ohio-1968, ¶ 30. *See also James* at ¶ 14-19.

{¶18} Based on this reasoning, the court in *McClain* concluded that

> [e]ven if [the claimant] had been engaged in other criminal conduct during the incident for which he was initially charged, [he] would still satisfy R.C. 2743.48(A)(4) if "no criminal proceeding is pending, can be brought, or will be brought by any prosecuting attorney * * * against the individual for any act associated with that conviction."

McClain at ¶ 15, quoting R.C. 2743.48(A)(4). *See also Jenkins v. State*, 10th Dist. Franklin No. 12AP-726, 2013-Ohio-5536, ¶ 18 (offender satisfies R.C. 2743.48(A)(4) because statute of limitations on other charges had expired and potential charges would violate offender's rights to a speedy trial, thus no other charges could be brought); *James* at ¶ 19 (offender's conviction for having weapons while under disability does not preclude him from satisfying R.C. 2743.48(A)(4) if he can establish that his convictions on the other charges have been vacated and the prosecuting attorney cannot pursue further criminal proceedings on those charges).

{¶19} We agree with the sound reasoning of the second and tenth appellate districts. The unambiguous, plain meaning of "no criminal proceeding can be brought, or will be brought by any prosecuting attorney" is clear. If the state *can no longer* bring charges against an offender, for whatever reason, the offender meets the requirements of R.C. 2743.48(A)(4). It does not matter if the state *could* have brought these charges against the offender when it initially charged him or her.

{¶20} As this court recently stated in *C.K. v. State*, 8th Dist. Cuyahoga No. 100193, 2014-Ohio-1243:

> [W]e do not read the word "can" as denoting "mere possibility," as the trial court seemed to believe. Theoretically, the prosecutor can always bring a charge, whether in good faith or not, even where the criminal charge may be outside of the statutory time, in violation of a defendant's speedy trial right, or barred by double jeopardy. Therefore, interpreting the word "can" in its literal sense renders the phrase at issue virtually meaningless.
>
> Rather, we agree with the Tenth District's interpretation of the phrase in a recent wrongful imprisonment case, where the court stated "[t]he use of the phrase 'no criminal proceedings * * * can * * * or will be brought' was clearly intended by the General Assembly to bar recovery to a claimant against whom *criminal proceedings are still factually supportable and legally permissible* following reversal." (Emphasis sic.) *LeFever v. State*, 10th Dist. Franklin No. 12AP-1034, 2013-Ohio-4606, ¶ 26, [*discretionary appeal not allowed* by *LeFever v. State*, 138 Ohio St.3d 1493, 2014-Ohio-2021, 8 N.E.3d 963].

C.K. at ¶ 27 - 28.[2]

{¶21} We note that *Hill*, *Jenkins*, and *James* have been reversed by the Ohio Supreme Court on *other grounds*. In a one-sentence opinion, the Ohio Supreme Court reversed these three cases on the authority of *Mansaray v. State*, 138 Ohio St.3d 277, 2014-Ohio-750, 6 N.E.3d 35. *See Hill v. State*, 139 Ohio St.3d 451, 2014-Ohio-2365, 12 N.E.3d 1203; *Jenkins v. State*, 140 Ohio St.3d 1449, 2014-Ohio-4414, 17 N.E.3d 596; and *James v. State*, 139 Ohio St.3d 1401, 2014-Ohio-2245, 9 N.E.3d 1060.

---

[2]On July 23, 2014, the Supreme Court accepted *C.K.* as a discretionary appeal. *See C.K. v. State*, 139 Ohio St.3d 1483, 2014-Ohio-3195, 12 N.E.3d 1229. The state's two propositions of law accepted for review are:

> 1. Under R.C. 2743.48(A)(4), a claimant must prove no further criminal prosecution can be brought for any act associated with his or her conviction. A claimant whose criminal case remains open, under investigation and in which the criminal statute of limitations has not expired, is unable to satisfy R.C. 2743.48(A)(4).
>
> 2. Under R.C. 2743.48(A)(4), contemporaneous criminal conduct arising out of the offense for which the claimant was originally charged bars a later action for wrongful imprisonment. *Gover*, 67 Ohio St.3d 93, 616 N.E.2d 207.
>
> Oral argument on the case has been set for May 19, 2015.

{¶22} *Mansaray*, however, has no application to the present case. The only issue in *Mansaray* was the fifth prong of the wrongful imprisonment statute, R.C. 2743.48(A)(5). *Id.* at ¶ 5 ("Because our conclusion with respect to R.C. 2743.48(A)(5) is dispositive, we will not address R.C. 2743.48(A)(1) through (4)."). Specifically, the Ohio Supreme Court held in *Mansaray* that when a defendant "seeks to satisfy R.C. 2743.48(A)(5) by proving that an error in procedure resulted in his release, the error in procedure must have occurred subsequent to sentencing and during or subsequent to imprisonment." *Id*. at the syllabus. Beckwith did not assert that he was a wrongfully imprisoned person due to an error in procedure. As such, *Hill*, *Jenkins*, and *James* are applicable here and are still good law regarding the fourth prong of the statute, R.C. 2743.48(A)(4) (as well as *McClain*, which relied on *Hill*, *Jenkins*, and *James*).

Analysis

{¶23} In this appeal, the state maintains that Beckwith cannot satisfy R.C. 2743.48(A)(4) because he committed (1) menacing (in its summary judgment motion, the state cited to Cleveland Codified Ordinances ("C.C.O.") 621.07 for this offense, which is a fourth-degree misdemeanor), (2) menacing by stalking (the state does not identify a code or statute for this violation, but asserts that it is a first-degree misdemeanor), (3) trespass with his admitted drinking alcohol before entering the library and behavior therein (the state does not identify a code or statute for this violation, but criminal trespass under R.C. 2911.21 or C.C.O. 623.04 is a misdemeanor of the fourth degree), and (4) "at a minimum, his behavior constitutes disorderly conduct under CCO 605.03" for making "romantic grunts" toward the library employee; disorderly conduct is a minor misdemeanor.

{¶24} In its summary judgment motion, the state also asserted that Beckwith's conduct amounted to obstructing official business, which is a second-degree misdemeanor, menacing by

stalking, which is a first-degree misdemeanor, and disorderly conduct by intoxication, which is a minor misdemeanor.

{¶25} R.C. 2901.13 sets forth the statute of limitations for criminal prosecutions. It provides that "a prosecution shall be barred unless it is commenced within" two years for a misdemeanor and six months for a minor misdemeanor. R.C. 2901.13(A)(1)(b) and (c).

{¶26} Beckwith's charges were based on events that occurred between May and November of 2011. As such, the state can no longer in good faith pursue any of these charges against Beckwith. Beckwith has therefore established the fourth prong of the wrongful imprisonment statute as a matter of law because "no criminal proceeding is pending, can be brought, or will be brought by any prosecuting attorney." R.C. 2743.48(A)(4).

{¶27} Accordingly, the trial court erred when it granted the state's summary judgment motion that was based only on R.C. 2743.48(A)(4). We note that upon remand Beckwith still has the burden to prove by a preponderance of the evidence the requirements of R.C. 2743.48(A)(5).

{¶28} Beckwith's sole assignment of error is sustained.

{¶29} Judgment reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover from appellee the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, JUDGE

TIM McCORMACK, P.J., and
EILEEN T. GALLAGHER, J., CONCUR