

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Joseph McGrath,	:	
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	No. 11AP-482
	:	(C.P.C. No. 10CVH-10-15535)
Ohio State, State of Ohio,	:	
	:	(ACCELERATED CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on December 13, 2011

Joseph McGrath, pro se.

Michael DeWine, Attorney General, and Lawrence H. Babich,
for appellee.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Joseph McGrath is appealing from the refusal of the Franklin County Court of Common Pleas to find him to be a "wrongfully incarcerated and/or falsely imprisoned" person. He assigns two errors for our consideration:

[I.] THE TRIAL COURT [ERRED] BY DENYING THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS A VOID GUILTY PLEA HAS NO EFFECT AT LAW AND IT DOES NOT EXIST FOR PURPOSES OF DETERMINING WHETHER A PERSON QUALIFIES TO SEEK COMPENSATION, FOR WRONGFUL INCARCERATION

PURSUANT TO R.C. § 2743.48 STATE V. MOOR, (2006), 165 Ohio App.3d 538, 847 N.E.2d 452.

[II.] THE TRIAL COURT [ERRED] BY DENYING THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND FOR A DETERMINATION HE WAS WRONGLY INCARCERATED, AS THE STATUTE GOVERNING ACTIONS AGAINST THE STATE FOR WRONGFUL IMPRISONMENT PROVIDES AN ALTERNATIVE TO THE ACTUAL INNOCENCE REQUIREMENT, THE PERSON SEEKING WRONGFULL IMPRISONMENT STATUS NEED ESTABLISH "ONLY" THAT AN ERROR IN PROCEDURE RESULTED IN HIS HER RELEASE, NELSON V. STATE, (2009), 183 Ohio App.3d 83, 915 N.E.2d 729, R.C. § 2743.48(A)-(5).

{¶2} McGrath was indicated on a charge of menacing by stalking in March 2007. He was initially found to lack the competence to stand trial as the result of a psychiatric evaluation reported in April 2007.

{¶3} A second psychiatric evaluation was done in the fall of 2007 and McGrath was found by the reporting psychiatrist to be competent.

{¶4} The trial judge in Cuyahoga County assigned to McGrath's case did not journalize a finding that McGrath was competent before accepting a guilty plea from McGrath. As a result, the plea was set aside on appeal.

{¶5} Under the circumstances, we agree that McGrath was not a wrongfully imprisoned individual.

{¶6} R.C. 2743.48(A) defines "wrongfully imprisoned individual":

(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:

(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.

(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 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.

(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.

{¶7} McGrath entered a plea at a time that an expert's report indicated that he was competent to start trial. When he entered his plea of guilty, he did not allege that he was lacking competence. The appeal resulted in the plea being set aside, not because McGrath was not guilty but because the trial court judge did not journalize a fact which apparently was not in debate—the fact McGrath was competent. Given these facts, McGrath does not satisfy the requirement of R.C. 2743.48(A)(2).

{¶8} Further, in this case, we note that no court has ever determined that the crime of menacing by stalking was never committed. See R.C. 2743.48(A)(5).

{¶9} McGrath was not entitled to a summary judgment finding him to have been a wrongfully imprisoned individual. Both assignments of error are overruled and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

KLATT, J., concurs separately.
DORRIAN, J., dissents.

KLATT, J., concurring separately.

{¶10} I concur with the majority decision to affirm the trial court's judgment. I write separately simply to note that because the appellant alleged a procedural error, it was not necessary for him to prove that the crime was either not committed by him, or not committed by any person. See R.C. 2743.48(A)(5). Nevertheless, I agree with the majority decision that because the appellant pled guilty to the offense, he did not satisfy the requirement contained in R.C. 2743.48(A)(2).

DORRIAN, J., dissenting.

{¶11} Because the trial court had found defendant to be incompetent and had not declared defendant restored to competency prior to accepting the guilty plea upon which the majority and the trial court based their decisions, I respectfully dissent.
