

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

RONALD LARKINS

Plaintiff

v.

THE STATE OF OHIO

Defendant

Case No. 2008-09767-WI

Judge J. Craig Wright

DECISION

{¶ 1} On September 17, 2008, plaintiff filed a claim for wrongful imprisonment pursuant to R.C. 2743.48.¹ On October 23, 2008, the parties filed a proposed

¹R.C. 2743.48 states, in relevant part:

“(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,

settlement agreement.² Civ.R. 12(H)(3) states: “[W]henver 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.

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.”

²R.C. 2743.15 provides in relevant part:

“(A) The director or other administrative chief, or the governing body, of any department, board, office, commission, agency, institution, or other instrumentality of the state, *with the approval of the attorney general and the court of claims*, may settle or compromise any civil action against the state insofar as the department, board, office, commission, agency, institution, or other instrumentality is named as a defendant.” (Emphasis added.)

C.C.R. 7 provides in part:

“(A) Pursuant to R.C. § 2743.15, a claimant and the state may execute an agreement to settle a claim filed in the court of claims. * * *

“(B) The court shall review the settlement agreement. If the court concurs with the terms of the settlement agreement, it shall approve and journalize the agreement. If the settlement agreement is not approved, the court may require the claimant and the state to reconsider the agreement. If the court does not approve the reconsidered agreement, the court shall assign the claim for trial.”

{¶ 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, on December 22, 2006, plaintiff commenced a proceeding in the Cuyahoga County Court of Common Pleas pursuant to R.C. 2305.02. On September 5, 2008, the Cuyahoga County Court of Common Pleas issued an order in which it stated the following:

{¶ 7} "Pursuant to the Joint Stipulation filed by Plaintiff Ronald Larkins and Defendant State of Ohio, c/o William D. Mason, Cuyahoga County Prosecutor on September 5, 2008, Ronald Larkins is hereby declared to be a 'wrongfully imprisoned individual' within the meaning of Ohio Revised Code Section 2743.48(A), as amended by Sub.S.B. 149, effective April 9, 2003."

{¶ 8} Upon review of the documents in the case file, the court finds that the record does not evidence, as required by R.C. 2305.02, a determination by a 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.

{¶ 9} "[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.)

{¶ 10} Moreover, the record does not evidence a certified copy of the judgment entry of the court of common pleas associated with the claimant's conviction and sentencing as required by R.C. 2743.48(E)(1).³

{¶ 11} In sum, inasmuch as the record lacks a determination from the Cuyahoga County Court of Common Pleas containing: 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) a certified copy of the judgment entry of the court of common pleas associated with plaintiff's conviction and sentencing, as required by R.C. 2743.48(E)(1), the court lacks jurisdiction over this action.

{¶ 12} Accordingly, the fairness and advisability of the settlement agreement is not properly before this court.⁴ Plaintiff's complaint shall be dismissed for lack of subject matter jurisdiction.



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³R.C. 2743.48(E) (1) states, in part:

"In a civil action as described in division (D) of this section, the complainant may establish that the claimant is a wrongfully imprisoned individual by submitting to the court of claims a certified copy of the judgment entry of the court of common pleas associated with the claimant's conviction and sentencing, and a certified copy of the entry of the determination of a court of common pleas that the claimant is a wrongfully imprisoned individual."

⁴See *Giancola v. State* (Dec. 30, 1982), Franklin App. Nos. 82AP-480; 82AP-675; 82AP-712. See also *Giancola v. State* (Mar. 28, 1985), Franklin App. No. 84AP-899. ("The trial court carefully and succinctly explained its reasons for failing to approve the settlement agreement and we find no abuse of discretion by the trial court in not approving said settlement.")

THE STATE OF OHIO

Defendant
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Judge J. Craig Wright

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.

J. CRAIG WRIGHT
Judge

cc:

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HTS/cmd
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