

[Cite as *In re McConnell*, 2005-Ohio-7120.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

www.cco.state.oh.us

IN RE: KEVIN E. MCCONNELL : Case No. V2004-60741

KEVIN L. MCCONNELL : DECISION

LAURA S. PHILLIPS : Judge Joseph T. Clark

Applicants :

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{¶ 1} This matter came on to be considered upon applicants' appeal from the September 23, 2005, order issued by the panel of commissioners. The panel's determination affirmed the final decision of the Attorney General, which denied applicant's claim for an award of reparations based upon the finding that the decedent's conduct had substantially contributed to his murder. The panel denied applicants' claim because it determined that the decedent had engaged in drug trafficking within ten years of the 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 Attorney General bears the burden of proof by a preponderance of the evidence with respect to the exclusionary criteria of R.C. 2743.60(E). *In re Williams*, V77-0739jud (3-26-79); and *In re Brown*, V78-3638jud (12-13-79). The panel found, upon review of the evidence, that the Attorney

General had presented sufficient evidence to prove that the decedent had engaged in felony drug trafficking.

{¶ 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} In this case, the panel considered the witness statements and the testimony of Detective Michael Pigman concerning the criminally injurious conduct. The court will not weigh the evidence or substitute its judgment for that of the trier of fact. See *In re Staninovski* (1987), 35 Ohio Misc.2d 7.

{¶ 5} Upon review of the file in this matter, the court finds that the panel of commissioners was not arbitrary in finding that the Attorney General's decision to deny applicants' claim should be affirmed pursuant to R.C. 2743.60(E).

{¶ 6} 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

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Judge

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KEVIN L. MCCONNELL : ORDER

LAURA S. PHILLIPS : Judge Joseph T. Clark

Applicants :

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

IT IS HEREBY ORDERED THAT:

1) The order of September 23, 2005, (Jr. Vol. 2258, Pages 95-98) is approved, affirmed and adopted;

2) This claim is DENIED and judgment entered for the State of Ohio;

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 Montgomery County Prosecuting Attorney and to:

Case No. V2004-60741

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DECISION

To S.C. Reporter 1-20-2006