

[Cite as *In re Russell*, 2005-Ohio-3917.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: RICHARD L. RUSSELL	:	Case No. V2004-61152
RICHARD L. RUSSELL	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶ 1} The applicant filed a reparations application seeking reimbursement of expenses incurred with respect to an April 14, 2004 assault incident. On August 20, 2004, the Attorney General denied the claim pursuant to R.C. 2743.60(E)(1) contending that the applicant engaged in violent felonious conduct on September 20, 2001 when he assaulted Eric Benson with an axe hammer, despite his misdemeanor conviction for disorderly conduct. On September 20, 2004, the applicant filed a request for reconsideration. On October 28, 2004, the Attorney General denied the claim once again pursuant to R.C. 2743.60(E)(1). On November 22, 2004, the applicant filed a notice of appeal to the Attorney General’s October 28, 2004 Final Decision. Hence, this matter came to be heard before this panel of three commissioners on April 6, 2005 at 10:50 A.M.

{¶ 2} The applicant, applicant’s counsel, and an Assistant Attorney General attended the hearing and presented testimony, oral argument, and exhibits for this panel’s consideration. Mr. Russell testified that he and Mr. Benson had been friends, however the nature of their relationship changed in July 2001 when Mr. Benson stabbed him. The applicant stated that the

police were contacted regarding the incident, however no investigation was ever performed by the police. The applicant stated that he believes Mr. Benson is a drug addict.

{¶ 3} Mr. Russell testified that on September 20, 2001 he and his girlfriend were traveling eastbound on 14th Avenue when he saw Eric Benson walking down the street. Mr. Russell explained that Mr. Benson flagged him down and he parked his vehicle in order to speak to Mr. Benson. The applicant indicated that after he exited his vehicle, Mr. Benson threatened him, taunted him, then ran behind a house and returned with a carving knife and a brick and attempted to assault him. However, the applicant explained that he was able to dodge the brick and to evade Mr. Benson's attempts to stab him after he retrieved a fallen tree branch for protection. Mr. Russell stated that a minor scuffle ensued and soon he and Mr. Benson were wrestling on the grass when Mr. Benson fell onto a big tree branch injuring himself. The applicant stated that he then returned to his vehicle and immediately left the scene with only minor cuts and bruises sustained from his brief contact with the tree. Lastly, Mr. Russell denied all allegations that he assaulted Mr. Benson on September 20, 2001.

{¶ 4} Jennifer Lykins, the applicant's girlfriend and an eye witness, appeared at the hearing and briefly testified concerning the events of September 20, 2001. Ms. Lykins testimony essentially corroborated the applicant's version of what transpired that day.

{¶ 5} Applicant's counsel stated that based on the testimony proffered the applicant's claim should be allowed. Counsel opined that both Mr. Russell and Ms. Lykins presented credible testimony, which is sufficient evidence that the applicant never assaulted Eric Benson on September 20, 2001. Counsel argued that no police officer was present at the scene and hence the police report is purely one-sided, since it only captures Mr. Benson's version of what

transpired on September 20, 2001. Counsel also argued that the applicant's misdemeanor disorderly conduct conviction is further evidence that he did not engage in felonious conduct. Counsel noted Mr. Benson's lengthy criminal history for the panel. Counsel also encouraged the panel to consider Tony McGill's taped statement concerning the incident. Lastly, counsel introduced (Exhibits 1-4) photographs of the September 20, 2001 scene and of Mr. Russell's July 2001 stab wound allegedly inflicted by Eric Benson.

{¶ 6} The Assistant Attorney General maintained that the October 28, 2004 Final Decision should be affirmed since there is ample evidence that proves the applicant engaged in violent felonious conduct against Eric Benson on September 20, 2001. The Assistant Attorney General stated that the police report, Mr. Russell's arrest and charge of felonious assault, and hospital photographs of Eric Benson's injuries clearly document and reveal Mr. Russell's violent felonious conduct on September 20, 2001. The Assistant Attorney General introduced (Exhibits A-C) photographs of Eric Benson's injuries.

{¶ 7} R.C. 2743.60(E)(1)(c) states:

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:

(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.

{¶ 8} From review of the file and with full and careful consideration given to all the evidence presented at the hearing, this panel makes the following determination. We find that the Attorney General has proven, by a preponderance of the evidence, that Richard Russell engaged in violent felonious conduct against Eric Benson on September 20, 2001. Therefore, the October 28, 2004 decision of the Attorney General is affirmed pursuant to R.C. 2743.60(E).

IT IS THEREFORE ORDERED THAT

- 1) The Attorney General's January 20, 2005 motion for telephone testimony is GRANTED;
- 2) The October 28, 2004 decision of the Attorney General is AFFIRMED;
- 3) This claim is DENIED and judgment is entered for the state of Ohio;
- 4) Costs are assumed by the court of claims victims of crime fund.

JAMES H. HEWITT III
Commissioner

GREGORY P. BARWELL
Commissioner

TIM MC CORMACK
Commissioner

ID #\4-dld-tad-041505

A copy of the foregoing was personally served upon the Attorney General and sent by regular mail to Butler County Prosecuting Attorney and to:

