

[Cite as *In re Willet*, 2005-Ohio-7128.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: STEVEN WILLET	:	Case No. V2005-80282
DEBORAH K. CRAIN	:	<u>ORDER OF A THREE-</u>
BART C. WILLET	:	<u>COMMISSIONER PANEL</u>
Applicants	:	

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{¶ 1} The applicants, Deborah Crain and Bart Willet, filed a reparations application seeking reimbursement of expenses incurred with respect to an August 13, 2003 aggravated vehicular homicide incident, whereby their son, Steven Willet (“decedent”), was killed. The decedent had been a passenger in Jonathan Buckler's (“Mr. Buckler”) motor vehicle. Mr. Buckler was found guilty of having operated the motor vehicle while under the influence of alcohol. On January 11, 2005, the Attorney General denied the claim pursuant to R.C. 2743.60(B) contending that the decedent had been out drinking with Mr. Buckler, prior to the accident, and therefore he knew or should have known that Mr. Buckler was under the influence of alcohol. On February 7, 2005, the applicants filed a request for reconsideration. On April 1, 2005, the Attorney General determined that the previous decision warranted no modification. On April 21, 2005, the applicants filed a notice of appeal to the Attorney General's April 1, 2005 Final Decision. Hence, this matter came to be heard before this panel of three commissioners on October 6, 2005 at 12:00 P.M.

{¶ 2} Deborah Crain, her attorney, and an Assistant Attorney General attended the hearing and presented an exhibit and brief comments for the panel's consideration. The Attorney General responded to questions from the bench and reiterated that the Final Decision should be affirmed pursuant to R.C. 2743.60(B) in light of the facts of the case. Deborah Crain read a prepared statement (Exhibit A) concerning her thoughts about the matter.

{¶ 3} Revised Code 2743.60(B) states:

(B)(1) The attorney general, a panel of commissioners, or a judge of the court of claims shall not make or order an award of reparations to a claimant if any of the following apply:

(a) The claimant is the offender or an accomplice of the offender who committed the criminally injurious conduct, or the award would unjustly benefit the offender or accomplice.

(b) Except as provided in division (B)(2) of this section, both of the following apply:

(i) The victim was a passenger in a motor vehicle and knew or reasonably should have known that the driver was under the influence of alcohol, a drug of abuse, or both.

(ii) The claimant is seeking compensation for injuries proximately caused by the driver described in division (B)(1)(b)(i) of this section being under the influence of alcohol, a drug of abuse, or both.

(c) Both of the following apply:

(i) The victim was under the influence of alcohol, a drug of abuse, or both and was a passenger in a motor vehicle and, if sober, should have reasonably known that the driver was under the influence of alcohol, a drug of abuse, or both.

(ii) The claimant is seeking compensation for injuries proximately caused by the driver described in division (B)(1)(b)(i) of this section being under the influence of alcohol, a drug of abuse, or both.

(2) Division (B)(1)(b) of this section does not apply if on the date of the occurrence of the criminally injurious conduct, the victim was under sixteen years of age or was at

least sixteen years of age but less than eighteen years of age and was riding with a parent, guardian, or care-provider.

{¶ 4} Even though we believe the applicants should be compensated by the program and that their son is a true victim of crime, this panel is nevertheless bound by the law that excludes the decedent from the program based upon the facts of this case. The Attorney General should petition the legislature to amend the statute to allow others similarly situated to qualify for an award of reparations. Therefore, the April 1, 2005 decision of the Attorney General shall be affirmed.

IT IS THEREFORE ORDERED THAT

- 1) The April 1, 2005 decision of the Attorney General is AFFIRMED;
- 2) This claim is DENIED and judgment is rendered for the state of Ohio;
- 3) Costs are assumed by the court of claims victims of crime fund.

THOMAS H. BAINBRIDGE
Commissioner

CLARK B. WEAVER, SR.
Commissioner

TIM MC CORMACK
Commissioner

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