

# 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  
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SETH NELSON

Plaintiff

v.

STATE OF OHIO

Defendant

Case No. 2008-09503-WI

Judge J. Craig Wright

## DECISION

{¶ 1} On September 5, 2008, plaintiff filed a claim for wrongful imprisonment pursuant to R.C. 2743.48.<sup>1</sup> Civ.R. 12(H)(3) states: “[W]henever it appears by

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<sup>1</sup>R.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,

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.

{¶ 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 the documents attached to plaintiff's complaint, on August 15, 2008, the Tuscarawas County Court of Common Pleas issued an entry in which it

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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."

found that plaintiff had satisfied the requirements of R.C. 2743.48(A)(1)-(5) and further found that plaintiff was a “wrongfully imprisoned individual” as that term is defined in R.C. 2743.48(A)(1)-(5).

{¶ 7} However, upon review of the documents in the case file, the court finds that the record does not evidence a determination by a common pleas court 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 as required by R.C. 2305.02.

{¶ 8} “[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.” (Emphasis sic.) *Brown v. State*, Lucas App. No. L-05-1050, 2006-Ohio-1393, at ¶19.

{¶ 9} The court notes that the Tuscarawas County Court of Appeals stated with regard to plaintiff in this case:

{¶ 10} “We note that subsection [R.C. 2743.48(A)](5), cited above, was amended, effective April 9, 2003, to allow a person, such as appellant, who could not establish his or her actual innocence, but who could establish that an error in procedure resulted in his or her release to file a complaint against the State of Ohio seeking a declaration that he or she had been wrongfully imprisoned. Prior to such time, only individuals who could establish their actual innocence could file such a complaint. Thus, prior to the amendment, appellant would not have had a cause of action because he alleges an error in procedure resulted in his release. The amendment to R.C. 2743.48(A)(5) created appellant’s cause of action.” *Nelson v. State of Ohio*, Tuscarawas App. No. 2006-AP-10-0061, 2007-Ohio-6274.

{¶ 11} Although R.C. 2743.48(A)(5) was amended as stated above, R.C. 2305.02 was not similarly amended. R.C. 2305.02 permits a court of common pleas to find an individual to be wrongfully imprisoned only upon a determination 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.

{¶ 12} In sum, inasmuch as the record lacks a determination from the Tuscarawas County 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 the court finds that it lacks jurisdiction over this action. Accordingly, plaintiff's complaint shall be dismissed.



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### 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.

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J. CRAIG WRIGHT  
Judge

cc:

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HTS/cmd  
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