

[Cite as *In re Swint*, 2007-Ohio-1421.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: ALEXANDER P. SWINT : Case No. V2004-60679

ALEXANDER P. SWINT : DECISION

Applicant : Judge J. Craig Wright

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{¶1} This matter came on to be considered upon applicant’s appeal from the August 4, 2006, 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 applicant failed to prove that he was a victim of 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 panel found, upon review of the evidence, that applicant failed to present sufficient evidence to meet his burden.

{¶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} Applicant asserts that he was injured as a result of a physical altercation that occurred at his residence. Applicant lived with Patricia Hamilton and her two sons, Bradley and Todd. At the hearing before the panel of commissioners, applicant testified that he was “very intoxicated” when he returned to the residence after drinking

at a neighbor's home. It is undisputed that a verbal confrontation between Bradley and applicant escalated into a physical altercation that also involved Todd. According to the information in the claim file, officers from the Canton Police Department arrived at the residence and investigated the incident as a domestic disturbance. Local prosecutors declined to file charges because investigators were unable to determine who instigated the altercation.

{¶15} The panel had the opportunity to consider the testimony of applicant, Hamilton, and her son Bradley. The panel noted in its decision that applicant was "heavily intoxicated" at the time of the incident and that his recollection of the altercation was inherently unreliable. The panel concluded that applicant failed to prove by a preponderance of the evidence that he was a victim of criminally injurious conduct.

{¶16} The credibility of witness testimony and the issue of whether applicant was injured as a result of criminal conduct involves a factual determination on a case-by-case basis. See *In re Walling* (1997), 91 Ohio Misc.2d 181. The court finds that the panel's decision contains sufficient findings of fact to support its conclusion that applicant was not injured as a result of criminally injurious conduct. On appeal from a determination of fact, a court is not permitted to substitute its judgment for that of the trier of the fact. *In re Saylor* (1982) 1 Ohio Misc.2d 1.

{¶17} Upon review of the file in this matter, the court finds that the panel of commissioners was not arbitrary in finding that applicant did not show by a preponderance of the evidence that he was entitled to an award of reparations.

{¶18} 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 applicant's claim.

Judge

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ALEXANDER P. SWINT : ORDER

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

IT IS HEREBY ORDERED THAT:

- 1) The order of August 4, 2006, (Jr. Vol. 2261, Page 29) 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.

J. CRAIG WRIGHT
Judge

AMR/cmd

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