

[Cite as *In re Rettich*, 2006-Ohio-3939.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION
www.cco.state.oh.us

IN RE: ROBERT W. RETTICH, IV : Case No. V2005-80827
ROBERT W. RETTICH, IV : ORDER OF A THREE-
Applicant : COMMISSIONER PANEL
_____ : : : : :
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{¶ 1} Robert Rettich ("applicant" or "Mr. Rettich") filed a reparations application seeking reimbursement of expenses incurred with respect to a June 21, 2003 shooting incident. On September 8, 2005, the Attorney General denied the applicant's claim pursuant to R.C. 2743.60(F) contending that the applicant engaged in substantial contributory misconduct, because he was attempting to purchase marijuana. On October 3, 2005, the applicant filed a request for reconsideration asserting that the claim should be reduced and not denied. On November 29, 2005, the Attorney General issued a Final Decision denying the claim once again pursuant to R.C. 2743.60(F). The Attorney General stated that the applicant admitted to a police officer that he was attempting to purchase marijuana when he was shot. On December 9, 2005, the applicant filed a notice of appeal to the Attorney General's Final Decision. Hence, this matter came to be heard before this panel of three commissioners on March 8, 2006 at 11:40 A.M.

{¶ 2} The applicant, the applicant's attorney, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for this panel's consideration.

Sergeant Craig Richardson ("Sgt. Richardson") of the Moraine Police Department testified that on June 21, 2003 he was contacted at home and dispatched to the scene of the incident. Sgt. Richardson stated that the applicant and the offender were already gone when he arrived at the scene, with the applicant having been transported to the hospital. Sgt. Richardson stated that he interviewed the applicant on June 23, 2003 and July 15, 2003. Sgt. Richardson indicated that during the July 15, 2003 interview the applicant admitted to him that he met the offender in order to purchase marijuana. Sgt. Richardson noted that he also interviewed the offender on July 10, 2003 about the shooting.¹ Sgt. Richardson explained that the offender told him the applicant was shot because he had attempted to steal a duffle bag containing marijuana. Sgt. Richardson revealed that the police discovered rolling papers, 11 empty baggies, two sandwich baggies of marijuana, and marijuana seeds in the applicant's vehicle. Sgt. Richardson stated that he believed the applicant is knowledgeable about drug transactions and that he is a drug dealer. Sgt. Richardson explained that any transaction in marijuana is a felony offense.

{¶ 3} Mr. Rettich (now age 22) testified that, as a result of the shooting, he was hospitalized for six days and was administered a variety of narcotics to ease his pain. The applicant denied that he ever traded or sold marijuana and stated that he was only at the scene to purchase a recreational amount of marijuana (\$200.00 worth) for himself and friends.

¹Sgt. Richardson's testimony concerning the interviews mirrors the police report.

The applicant stated that he never attempted to steal from the offender, especially since the offender was twice his size.

{¶ 4} The applicant's counsel stated that based on the applicant's testimony an award of reparations should be granted and reduced in order to allow the applicant some measure of recovery. Counsel argued that this incident was not a "drug deal gone bad," but a robbery attempt since the offender was charged with such. Counsel asserted that the applicant had only limited exposure to the drug culture and hence counsel urged the panel to consider the applicant's age and experience with regard to this matter.

{¶ 5} The Assistant Attorney General maintained the claim should be denied since the applicant was engaged in substantial contributory misconduct at the time he was shot. The Assistant Attorney General stated that the applicant admitted he was injured while attempting to purchase marijuana. The Assistant Attorney General asserted that it is widely known by the court that drug dealing is an inherently dangerous activity and hence the applicant should have known that he could have been harmed by engaging in such activity. Moreover, the Assistant Attorney General contended that the evidence indicates the applicant was a drug trafficker himself, since he admitted under oath that he was buying marijuana for his friends as well as for himself at the time of the criminally injurious conduct.

{¶ 6} Revised Code 2743.51(M) states:

(M) "Contributory misconduct" means any conduct of the claimant or of the victim through whom the claimant claims an award of reparations that is unlawful or intentionally tortious and that, without regard to the conduct's

proximity in time or space to the criminally injurious conduct, has a causal relationship to the criminally injurious conduct that is the basis of the claim.

{¶ 7} Revised Code 2743.60(F) states:

(F) In determining whether to make an award of reparations pursuant to this section, a single commissioner or panel of commissioners shall consider whether there was contributory misconduct by the victim or the claimant. A single commissioner or a panel of commissioners shall reduce an award of reparations or deny a claim for an award of reparations to the extent it is determined to be reasonable because of the contributory misconduct of the claimant or the victim.

If the attorney general recommends that a claim be denied because of an allegation of contributory misconduct that is supported by the finding of fact in division (C)(6) of section 2743.59 of the Revised Code, the burden of proof on the issue of that alleged contributory misconduct shall be upon the claimant, if either of the following apply:

(1) The victim was convicted of a felony more than ten years prior to the criminally injurious conduct that is the subject of the claim or has a record of felony arrests under the laws of this state, another state, or the United States;

(2) There is good cause to believe that the victim engaged in an ongoing course of criminal conduct within five years or less of the criminally injurious conduct that is the subject of the claim.

{¶ 8} From review of the file and with full and careful consideration given to all the information presented at the hearing, we make the following determination. In *In re Staaf*, V04-61012tc (9-23-05), 2005-Ohio-5673 the panel denied the victim's claim pursuant to R.C. 2743.60(F), when the victim admitted to the police that he was at the scene of the criminally injurious conduct to purchase illegal drugs. Accordingly, we find that Mr. Rettich engaged in substantial contributory misconduct when he attempted to engage in an illegal drug transaction. Therefore, the November 29, 2005 decision of the Attorney General shall be affirmed.

IT IS THEREFORE ORDERED THAT

- 1) The November 29, 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.

RANDI OSTRY LE HOTY
Commissioner

THOMAS H. BAINBRIDGE
Commissioner

TIM MC CORMACK
Commissioner

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

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To S.C. Reporter 8-2-06

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ORDER