

Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center

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IN RE: CYNTHIA D. PRESTON

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Applicant

Case No. V2007-90129

Commissioners:
Randi Ostry LeHoty, Presiding
Gregory P. Barwell
Clarence E. Mingo II

ORDER OF A THREE- COMMISSIONER PANEL

{¶ 1} Cynthia Preston (“applicant” or “Ms. Preston”) filed a reparations application seeking reimbursement of expenses incurred with respect to an alleged August 17, 2006 harassment incident. On January 3, 2007, the Attorney General denied the claim pursuant to R.C. 2743.52(A) contending that the applicant failed to prove she was a victim of criminally injurious conduct. On January 10, 2007, the applicant filed a request for reconsideration. On January 29, 2007, the Attorney General denied the claim once again. On February 27, 2007, the applicant filed a notice of appeal to the Attorney General’s January 29, 2007 Final Decision. On August 22, 2007, a hearing was convened. On August 31, 2007, the panel ordered the parties to file supplemental

briefs and continued the matter. On October 18, 2007, another hearing was convened before this panel of three commissioners.

{¶ 2} The applicant and an Assistant Attorney General attended the hearing and presented brief comments for the panel's consideration. Ms. Preston briefly testified concerning her mother's actions toward her. After hearing the applicant's testimony, the Assistant Attorney General summarized the case and reiterated her position for denying the claim.

{¶ 3} Revised Code 2743.51(C) states:

(C) "Criminally injurious conduct" means one of the following:

(1) For the purposes of any person described in division (A)(1) of this section, any conduct that occurs or is attempted in this state; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, except when any of the following applies:

(a) The person engaging in the conduct intended to cause personal injury or death;

(b) The person engaging in the conduct was using the vehicle to flee immediately after committing a felony or an act that would constitute a felony but for the fact that the person engaging in the conduct lacked the capacity to commit the felony under the laws of this state;

(c) The person engaging in the conduct was using the vehicle in a manner that constitutes an OVI violation;

(d) The conduct occurred on or after July 25, 1990, and the person engaging in the conduct was using the vehicle in a manner that constitutes a violation of section 2903.08 of the Revised Code;

(e) The person engaging in the conduct acted in a manner that caused serious physical harm to a person and that constituted a violation of section 4549.02 or 4549.021 of the Revised Code.

{¶ 4} Revised Code 2743.51(L) states:

(L) "Victim" means a person who suffers personal injury or death as a result of any of the following:

- (1) Criminally injurious conduct;
- (2) The good faith effort of any person to prevent criminally injurious conduct;
- (3) The good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct.

{¶ 5} From review of the file and with full and careful consideration given to all the information presented at the hearing, we find that the applicant failed to prove by a preponderance of the evidence that she was a victim of criminally injurious conduct. Ms. Preston failed to present sufficient evidence that her mother engaged in conduct that posed a substantial threat of personal injury or death to her. Therefore, the January 29, 2007 decision of the Attorney General shall be affirmed.

{¶ 6} IT IS THEREFORE ORDERED THAT

- 1) The January 29, 2007 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
Presiding Commissioner

GREGORY P. BARWELL
Commissioner

CLARENCE E. MINGO II
Commissioner

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

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Jr. Vol. 2267, Pgs. 92-95
To S.C. Reporter 2-14-2008