

[Cite as *In re Prince*, 2005-Ohio-6048.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: MICHAEL A. PRINCE : Case No. V2004-60989

MICHAEL A. PRINCE : DECISION

Applicant : Judge J. Craig Wright

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{¶ 1} This matter came on to be considered upon applicant's appeal from the April 21, 2005, 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 hospital records show that applicant engaged in felonious drug use at the time of the 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 rebut the presumption of felonious conduct.

{¶ 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} In this case, applicant was assaulted in a nightclub and transported to a hospital for treatment. A hospital laboratory report contained in the claim file shows that plaintiff tested positive for cocaine and opiates.

{¶ 5} At the judicial hearing, applicant argued that the panel's reliance on *In re Dawson* (1993), 63 Ohio Misc.2d 79, is misplaced because that case involved a toxicology report rather than a hospital laboratory report which applicant characterizes as a preliminary drug screen. Applicant also asserted that his testimony before the panel of commissioners was sufficient to rebut any presumption of felonious conduct that was raised by the results of the laboratory report. Applicant had testified that he did not ingest illegal drugs and that he was subject to random drug screens at his place of employment.

{¶ 6} In *Dawson*, the court held that "the positive evaluation on the toxicology report for the presence of cocaine proves by a preponderance of the evidence that the applicant committed a felonious act." *Dawson* at 81. The court finds that the holding of *Dawson* is applicable to the facts of this case and that the hospital laboratory report contained in the claim file is sufficient evidence to establish a presumption of felonious drug use.

{¶ 7} The court notes that the panel considered applicant's testimony and found that he failed to sufficiently rebut the presumption of felonious conduct. The court will not weigh the evidence or substitute its judgment for that of the trier of fact. See *In re Staninovski* (1987), 35 Ohio Misc.2d 7.

{¶ 8} 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.

{¶ 9} 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.

J. CRAIG WRIGHT
Judge

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MICHAEL A. PRINCE : ORDER

Applicant : Judge J. Craig Wright

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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 April 21, 2005, (Jr. Vol. 2257, Pages 1-6) 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 Franklin County Prosecuting Attorney and to: