

ORIGINAL

In the  
**Supreme Court of Ohio**

GERRY E. GRIFFITH, JR.,	:	Supreme Court Case No. 09-1363
	:	
Plaintiff-Appellee,	:	On Appeal from the
	:	Franklin County
v.	:	Court of Appeals,
	:	Tenth Appellate District
STATE OF OHIO,	:	
	:	Court of Appeals Case
Defendant-Appellant.	:	No. 08AP-964
	:	

**DEFENDANT-APPELLANT STATE OF OHIO'S  
MERIT BRIEF**

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## INTRODUCTION

When the State has wrongfully imprisoned an individual, R.C. 2743.48 sets forth the procedure for that individual to obtain monetary relief for the period of improper incarceration. This appeal seeks to clarify the steps that must be taken to prosecute such claims when the wrongfully imprisoned individual was released due to an “error in procedure,” a new category of claims that the General Assembly added to the statute in 2003.

R.C. 2743.48 creates a two-step process for individuals seeking to recover for wrongful imprisonment: (1) the individual must first file a declaratory judgment action in a court of common pleas, which must determine whether the individual is a “wrongfully imprisoned individual” under R.C. 2743.48(A); and (2) if the court of common pleas finds that the individual was wrongfully imprisoned, the individual must file an action in the Court of Claims for monetary damages within two years. See *Walden v. State* (1989), 47 Ohio St. 3d 47, 49–50. To prove wrongful imprisonment, an individual must establish a variety of factors, including that he was either actually innocent of the offense or, as of 2003, that he was released due to a procedural error. See R.C. 2743.48(A)(1)–(5). Because wrongful imprisonment determinations turn on factors steeped in criminal law, the bifurcated process makes sense: Courts of common pleas evaluate the criminal law aspects of the process, and the Court of Claims, which exists solely to evaluate monetary claims against the State, hears the ensuing damages action.

Even though courts have used this two-step process to evaluate wrongful imprisonment claims since the statute was originally enacted, the Tenth District concluded that the General Assembly created a parallel process for claims premised on procedural error. According to the Tenth District, while the Court of Claims still has exclusive jurisdiction over the damages actions for all wrongful-imprisonment claims, it may also exercise jurisdiction over the declaratory judgment actions for wrongful-imprisonment claims premised on procedural error because the

General Assembly did not specify that such claims *must* be resolved in common pleas court, as is the case with claims premised on actual innocence. See R.C. 2305.02; R.C. 2743.48(A)(5).

Although the specific subsection referring to procedural error does not clearly define which court has jurisdiction over the declaratory judgment actions for such wrongful-imprisonment claims, the Tenth District's interpretation is wrong for three reasons. First, it contravenes several other subsections in R.C. 2743.48 that establish the two-step process outlined above for all wrongful-imprisonment claims. The General Assembly did not make any substantive changes to these subsections in the 2003 amendments, and with good reason. Unlike courts of common pleas, which hear civil and criminal cases, the Court of Claims has a purely civil docket; it does not normally see the criminal law issues that arise in these declaratory judgment actions. Likewise, forcing the Court of Claims to hear such cases will raise various procedural problems.

Second, the legislative history of the 2003 amendments to R.C. 2743.48 confirms that the General Assembly explicitly sought to maintain the existing procedure for prosecuting such claims. The legislative history is replete with references to the established two-step process; no mention is made of the Tenth District's parallel process.

Finally, the Tenth District's interpretation fails as a matter of law. The Court of Claims is a court of limited jurisdiction that "enjoys only that jurisdiction specifically conferred upon it by the General Assembly"; it may not assume jurisdiction by implication. *Steward v. Ohio Dep't of Natural Res.* (10th Dist. 1983), 8 Ohio App. 3d 297, 299. Because the General Assembly did not expressly give the Court of Claims jurisdiction over declaratory judgment actions for wrongful imprisonment claims premised on procedural error, the court may not hear them.

For these and other reasons, the Court should reverse the decision below.

## STATEMENT OF THE CASE AND FACTS

This case concerns the procedure for prosecuting wrongful-imprisonment claims in Ohio; it does not turn on the individual facts of this case. Thus, the statement of the case and facts focuses primarily on explaining the statutory framework relevant to this matter.

### **A. The General Assembly enacted a wrongful imprisonment recovery scheme in 1986 and amended it in 2003.**

In 1986, the General Assembly enacted R.C. 2743.48, which created a cause of action against the State for wrongful imprisonment. The scheme was created to “replac[e] the former practice of compensating wrongfully imprisoned persons by *ad hoc* moral claims legislation.” *Walden*, 47 Ohio St. 3d at 49. Because this case concerns the changes that the General Assembly made to this scheme in 2003, it is important to clarify what the statute said both before and after those revisions.

Before 2003, an individual seeking to qualify as a wrongfully imprisoned individual under R.C. 2743.48(A) had to demonstrate five things. The first four factors are the same both before and after the 2003 amendment: Briefly, they require the individual to prove that he was convicted of a felony or aggravated felony under state law, that he did not plead guilty to it, that he served his sentence in a state facility, and that his conviction was somehow eliminated and further charges cannot or will not be brought. *Id.* at (A)(1)–(4). The final factor, which is at issue here, required the individual to show that, sometime during or after his imprisonment, a court of common pleas determined that he either did not commit the offense, including all lesser-included offenses, or no one committed it. *Id.* at (A)(1)–(5) (effective 10/6/94).

When the General Assembly enacted R.C. 2743.48, it also enacted a companion statute, R.C. 2305.02, which gave courts of common pleas “exclusive, original jurisdiction to hear and determine an action or proceeding that is commenced by an individual who satisfies [R.C.

2743.48(A)(1)–(4)] and that seeks a determination by the court” that he did not commit the offense at issue under (A)(5). Once a court of common pleas issues a determination of wrongful imprisonment in this regard, R.C. 2743.48(D) gives the Court of Claims exclusive, original jurisdiction over a civil action to seek damages for that injury.

Reading these provisions and other subsections of R.C. 2743.48 together, this Court has recognized that an individual must file two suits to recover on a wrongful-imprisonment claim. First, the individual must file a declaratory action in a court of common pleas to establish that the individual qualifies as a “wrongfully imprisoned individual” within the meaning of R.C. 2743.48(A)(1)–(5). See *Walden*, 47 Ohio St. 3d at 49–50. Second, if the court of common pleas makes this eligibility determination, the individual must then file an action in the Court of Claims within two years in order to obtain monetary damages. See *id.* at 50; see also *State ex rel. Jones v. Suster* (1998), 84 Ohio St. 3d 70, 72 (“If the common pleas court makes such a finding [of wrongful imprisonment], then the petitioner may file a civil suit for money damages against the state. The claim must be commenced in the Court of Claims within two years of the common pleas court’s determination that the petitioner had been wrongfully incarcerated.”) (citations omitted); see also *Norris v. Ohio Dep’t of Rehab. & Corr.* (Ct. of Claims 2005), 2005-Ohio-3959, ¶ 8 (“[P]laintiff 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.”)

In 2003, the General Assembly amended R.C. 2743.48. See Sub. S.B. No. 149, 124th General Assembly. Most of the changes, including those that made the statute gender neutral and increased the amount that wrongfully imprisoned individuals can recover, are not pertinent to this case. But, the General Assembly also added a new category of individuals that may seek damages for wrongful imprisonment under section (A)(5)—those who were released because of

a procedural error. In full, the new section provides that a wrongfully imprisoned individual is one who, in addition to establishing the factors in R.C. 2743.48(A)(1)–(4), also can show that:

*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.*

R.C. 2743.48(A)(5) (emphasis added). The statute does not define the phrase “an error in procedure resulted in the individual’s release.”

Because the General Assembly placed this new category of claims before the phrase “it was determined by a court of common pleas,” the plain text of the subsection itself does not clarify what court has jurisdiction over the declaratory judgment action for a wrongful imprisonment premised on procedural error. Likewise, the General Assembly did not amend the related jurisdictional statute, R.C. 2305.02, to clarify that courts of common pleas also have exclusive, original jurisdiction over wrongful-imprisonment claims premised on procedural error.

**B. Gerry Griffith filed an action in the Court of Claims for wrongful imprisonment; the Tenth District held that the Court of Claims had jurisdiction to hear the case.**

Griffith pled guilty to a federal charge of possession of a firearm in furtherance of drug trafficking in the United States District Court for the Northern District of Ohio. The Sixth Circuit, however, reversed the district’s court’s denial of Griffith’s suppression motion, *United States v. Griffith* (6th Cir. Aug. 24, 2006), No. 05-3640, 193 Fed. Appx. 538, 543, and Griffith was released from custody in January 2007, see Trial Record 12 at ¶ 6 (“T.R.”). Griffith now

claims that he was wrongfully imprisoned based on the procedural error prong of R.C. 2743.48(A)(5).<sup>1</sup>

Instead of filing a claim in a court of common pleas for a determination that he qualifies as a wrongfully imprisoned individual, Griffith filed his claim directly in the Court of Claims. T.R. 1. The State moved to dismiss on several bases, arguing in part that the Court of Claims lacked jurisdiction over a declaratory judgment action regarding whether an individual was wrongfully imprisoned under R.C. 2743.48(A)(1)–(5). T.R. 17. The Court of Claims granted the motion, finding that it could not exercise jurisdiction over the case until Griffith obtained a declaration from a court of common pleas stating that he is a wrongfully imprisoned individual. T.R. 19.

Griffith appealed the dismissal, and the Tenth District Court of Appeals reversed the Court of Claims' decision. See *Griffith v. State*, 2009-Ohio-2854, ¶ 17. The Tenth District held that the 2003 amendment to R.C. 2743.48 permitted the Court of Claims to rule on the declaratory judgment action for a wrongful-imprisonment claim premised on procedural error, instead of limiting its jurisdiction to the subsequent damages action. *Id.* at ¶ 16.

## ARGUMENT

### **Appellant State of Ohio's Proposition of Law No. 1:**

*The courts of common pleas have exclusive, original jurisdiction to determine whether an individual was wrongfully imprisoned.*

Although no one disputes that the established two-step process still applies to wrongful-imprisonment claims premised on actual innocence, R.C. 2743.48(A)(5) does not provide the

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<sup>1</sup> Because this case poses the question whether the Court of Claims has jurisdiction to review the merits of a wrongful imprisonment suit premised on procedural errors, the merits of Griffith's claim is not properly before this Court. If and when a court *does* reach the merits of this case, however, it is important to note that Griffith's complaint fails to state a claim upon which relief may be granted. As noted above, to recover for wrongful imprisonment, an individual must show, among other things, that he was found guilty of state charges. R.C. 2743.48(A)(1)–(5). Griffith's claim fails on multiple fronts, the most notable being that he *pled guilty* (as opposed to being found guilty) to *federal* firearm charges. See *Griffith*, 193 Fed. Appx. at 539.

same clear directive for wrongful-imprisonment claims premised on procedural error. This ambiguity is fleeting, though, for three reasons. First, numerous other provisions in R.C. 2743.48 reveal that the General Assembly intended to, and actually did, maintain the established two-step process for all wrongful imprisonment claims. That decision not only makes sense, but it also avoids numerous procedural problems. Second, the legislative history from the 2003 amendment further confirms that the General Assembly intended to preserve the procedural status quo. Finally, because the General Assembly did not specifically vest the Court of Claims (a court of limited jurisdiction) with jurisdiction over declaratory judgment actions for wrongful imprisonment claims premised on procedural error, it cannot hear such matters. As such, this Court should reverse the decision below.

**A. Read in its entirety, R.C. 2743.48 provides courts of common pleas with exclusive, original jurisdiction over all declaratory judgment actions filed to establish wrongful-imprisonment claims, and only allows the Court of Claims to preside over the ensuing damages actions.**

**1. The full text of R.C. 2743.48 preserves the existing two-step process for all wrongful imprisonment claims.**

As amended in 2003, R.C. 2743.48 states that an individual claiming wrongful imprisonment must show, among other things, that:

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.

R.C. 2743.48(A)(5). Focusing primarily on this provision, the Tenth District concluded that the Court of Claims has jurisdiction over declaratory judgment actions for wrongful imprisonment claims premised on procedural error because "the grammatical structure used by the legislature" shows that it "intentionally placed the burden of obtaining a common pleas determination only upon the second alternative," claims premised on innocence. See *Griffith*, 2009-Ohio-2854, at

¶ 11; see also *Larkins v. State*, 2009-Ohio-3242, ¶ 12–13 (holding that either a court of common pleas or the Court of Claims can hear declaratory judgment actions for claims premised on procedural error). Thus, this subsection does not specifically require a court of common pleas to resolve procedural error cases, as it does with actual innocence claims, which certainly complicates the matter.

When interpreting statutes, though, courts must strive to effectuate the General Assembly’s intent in enacting the *entire* statute. *State v. Jackson*, 102 Ohio St. 3d 380, 2004-Ohio-3206, ¶ 34. “[A] court cannot pick out one sentence and disassociate it from the context, but must look to the four corners of the enactment to determine the intent of the enacting body.” *Id.* (quoting *State v. Wilson* (1997), 77 Ohio St. 3d 334, 336). Further, “[i]n looking to the face of a statute or Act to determine legislative intent, significance and effect should be accorded to every word, phrase, sentence and part thereof, if possible.” *Wilson*, 77 Ohio St. 3d at 336–37; see also R.C. 1.47(B)–(D). In this process, “[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage.” R.C. 1.42. Such a full context review of R.C. 2743.48 reveals that the General Assembly intended to, and actually did, maintain the existing two-step process for all wrongful imprisonment claims.

Initially, to qualify as a “wrongfully imprisoned individual” under the current version of R.C. 2743.48, an individual must show, in a declaratory judgment action, that: (1) he was charged with a felony or aggravated felony under state law; (2) he was found guilty of, but did not plead guilty to, the specific charge or a lesser-included offense that was also a felony or aggravated felony; (3) he was sentenced to a term of imprisonment in a state correctional facility for the offense; (4) his conviction was vacated, dismissed, or reversed, the prosecutor cannot or will not appeal, and no further criminal proceeding can or will be brought for the underlying acts,

and (5) he was released from prison due to a procedural error or the court of common pleas determined that he was actually innocent. R.C. 2743.48(A)(1)–(5). These five factors cannot be proved in a bare pleading; rather, they require a reviewing court to make numerous legal and factual determinations. But only the fifth factor requires a specific court to take action.

Despite the lack of specificity in the factors themselves, the rest of the statute only refers to courts of common pleas performing these evaluations. R.C. 2743.48(B)(1) places a specific duty on the court of common pleas to notify those individuals that *it* deems to be wrongfully imprisoned of their rights “to commence a civil action against the state in the court of claims because of the person’s wrongful imprisonment. . . .” *Id.* Likewise, R.C. 2743.48(B)(2) provides that the court of common pleas has to notify the clerk of the Court of Claims of a wrongful-imprisonment determination in writing and within seven days of the entry, so that the clerk can create files for such individuals.

Except in regard to ministerial tasks, R.C. 2743.48 does not recognize or even imply a role for the Court of Claims in the declaratory judgment process. See R.C. 2743.48(C)(2) (requiring the clerk of the Court of Claims to send regular notices to an individual that a court of common pleas has found to be wrongfully imprisoned if that individual has not filed a damages action within a certain period of time after the court of common pleas’ ruling). In fact, R.C. 2743.48 only mentions the Court of Claims in noting its authority to preside over a suit for damages filed *after* a court of common pleas determines that the individual was wrongfully imprisoned. See R.C. 2743.48(D) (giving the Court of Claims exclusive, original jurisdiction over civil actions filed by “to recover a sum of money . . . because of the individual’s wrongful imprisonment”). Even in those actions, the quantum of proof necessary to obtain damages is tied directly to the court of common pleas’ decision: A claimant may establish wrongful imprisonment in the court

of claims by submitting a certified copy of the judgment entry from his original conviction “and a certified copy of the entry of the determination of a court of common pleas that the claimant is a wrongfully imprisoned individual.” *Id.* at (E)(1). In fact, “[n]o other evidence shall be required,” as the court of common pleas entry constitutes irrefutable proof of wrongful imprisonment. *Id.*

Finally, R.C. 2743.48(H) provides that, “[t]o be eligible to recover a sum of money as described in this section because of wrongful imprisonment,” “the wrongfully imprisoned individual shall commence a civil action under this section in the court of claims no later than two years after the date of the entry of the determination of a court of common pleas that the individual is a wrongfully imprisoned individual.” In short, the statute expressly states that a cause of action for damages based on wrongful imprisonment only accrues *after an individual obtains a declaration from a court of common pleas stating that he was wrongfully imprisoned*, at which point the individual has two years to file his suit in the Court of Claims. *Id.*; see also *Nelson v. State*, 2007-Ohio-6274, ¶ 21–22 (holding that a six-year statute of limitations applies to declaratory judgment actions under this section). This subsection modifies the general rule that a cause of action accrues when the wrongful act is committed, see *Harris v. Liston* (1999), 86 Ohio St. 3d 203, 205, and directly ties the statute of limitations for a damages suit to the court of common pleas’ declaratory judgment decision.

None of these sections are new; they are identical to the provisions that this Court cited in recognizing and explaining the established two-step process (except that they are now gender-neutral). See *State ex rel. Jones*, 84 Ohio St. 3d at 72. Under them, courts of common pleas evaluate whether an individual was wrongfully imprisoned, and the Court of Claims’ only substantial role is to preside over the subsequent damages action. The continued existence of

these sections demonstrates that the General Assembly intended for *all* claims under this section to proceed under the established two-step process noted by this Court. See *State v. Ferguson*, 120 Ohio St. 3d 7, 2008-Ohio-4824, ¶ 22 (noting that the General Assembly is presumed to be aware of prior judicial interpretations of statutes when it amends them).

The Tenth District failed to honor this framework. It acknowledged the above sections but cast them aside because they did not specifically preclude the parallel process: “[W]hile R.C. 2743.48(B), (C), (E), and (H) all contain some interplay between a determination by the common pleas court under R.C. 2305.02, and an action in the Court of Claims under R.C. 2743.48, there is nothing in those sections that would conflict with our above determination.” *Griffith*, 2009-Ohio-2854, at ¶ 13. The inquiry, though, is what the full text reveals. See *Wilson*, 77 Ohio St. 3d at 336. And the entirety of R.C. 2743.48 shows that the General Assembly intended to, and did, preserve the two-step process for *all* wrongful-imprisonment claims.

**2. The established two-step process makes sense in view of the legal issues involved in wrongful-imprisonment claims, and the Tenth District’s interpretation creates numerous procedural problems.**

Moreover, maintaining the established two-step process makes sense, both in terms of the legal issues involved in these cases and the practical consequences of a change to the system. See *In re: T.R.*, 120 Ohio St. 3d 136, 2008-Ohio-5219, ¶ 16 (noting that courts must avoid absurd results in interpreting statutes). First, even though wrongful-imprisonment claims are civil in nature, the court presiding over the declaratory judgment action must scrutinize the underlying criminal matter and make several findings steeped in criminal law. Courts of common pleas hear criminal cases on a daily basis, and thus those judges can easily understand and evaluate these substantive criminal issues. The Court of Claims, by contrast, is a statutorily created court designed specifically to handle civil claims for monetary damages against the State; it has no criminal jurisdiction. See R.C. 2743.03. It makes sense that the General Assembly would want

courts of common pleas make the various R.C. 2743.48(A) determinations instead of a court that operates exclusively in the civil sphere.

Indeed, if the Court of Claims were forced to hear these cases, it would have to deal with numerous complex criminal issues in every case, including: (1) whether the individual was found guilty of the indicted charge or a lesser-included offense, which can be a complicated analysis even for regular criminal practitioners, see *State v. Evans*, 122 Ohio St. 3d 381, 2009-Ohio-2974, ¶¶ 7–33; (2) whether the prosecutor in the case can seek a further appeal, which turns on an evaluation of the State’s right to appeal criminal matters under R.C. 2745.67; (3) whether the prosecutor can bring further charges, which depends on concepts like speedy trial and double jeopardy that do not otherwise arise in the Court of Claims; (4) if the prosecutor can bring further charges, whether the prosecutor will reasonably do so, which requires extensive knowledge of the criminal justice system and the related investigatory processes, see *Brown v. State*, 2006-Ohio-1393, ¶¶ 22–25, 27–32 (finding, in a 2-1 decision, that an individual was not wrongfully imprisoned even though he was released based on DNA evidence because the prosecutor claimed that he remained a suspect in the crime); and (5) in procedural-error cases, whether an “error in procedure resulted in the individual’s release.” This latter task is especially difficult in view of the fact that R.C. 2743.48 does not define that phrase; it could conceivably mean anything from a violation of a rule of criminal procedure to every ruling but the ultimate determination of guilt. Forcing the Court of Claims to review such matters is little more than inviting error.

Second, as a practical matter, the Tenth District’s interpretation will cause numerous problems. Under that interpretation, the Court of Claims will receive cases from all 88 counties that will require factual and legal determinations regarding particular criminal cases. Prosecutors (and potentially witnesses) would be forced to travel to Franklin County for these cases, instead

of acting in their own jurisdictions, which will be both costly and inefficient. Further, the system will create confusion. If an individual wants to claim wrongful imprisonment premised on both actual innocence and procedural error, can (or must) he file declaratory judgment actions in both the Court of Claims and a court of common pleas? Can such cases proceed concurrently? Such a rule raises numerous procedural questions, but the statute is devoid of answers.

If the General Assembly wants the Court of Claims to begin reviewing such complex questions of criminal law and to impose such procedural difficulties on the system, it should state as much in the statute and provide some guidance for how such claims should be handled. Such a significant break from the existing law should not be implied from a bare ambiguity. See *Sheet Metal Workers' Int'l Ass'n v. Gene's Refrigeration, Heating & Air Conditioning, Inc.*, 122 Ohio St. 3d 248, 2009-Ohio-2747, ¶ 42. As such, the Court should reverse the Tenth District's decision and reaffirm the two-step process in R.C. 2743.48 and recognized in *Walden* and *Jones*.

**B. The legislative history of the 2003 amendment to R.C. 2743.48 further demonstrates that the General Assembly intended to maintain the established two-step process for resolving all wrongful imprisonment claims.**

The legislative history of the 2003 amendment to R.C. 2743.48 provides additional evidence that the General Assembly intended to maintain this established two-step process for all wrongful-imprisonment cases. While legislative history should not be used to override the plain meaning of a provision, see *State ex rel. Brinda v. Lorain Cty. Bd. of Elections*, 115 Ohio St. 3d 299, 2007-Ohio-5228, ¶ 25, this Court may consider relevant legislative history to determine the General Assembly's intent when a statute is ambiguous. See R.C. 1.49(C); *State v. Jordan* (2000), 89 Ohio St. 3d 488, 492. Here, the legislative history proves that the General Assembly wanted only to expand the class of wrongful imprisonment claimants, not to alter the procedure for recovery; nothing suggests that the General Assembly intended for the Court of Claims to

assume jurisdiction over declaratory judgment actions for wrongful-imprisonment claims premised on procedural error.

The original bill, as introduced in the Senate, did not include the procedural-error category of wrongful-imprisonment claims. See Sub. S.B. No. 149, 124th General Assembly, as Introduced.<sup>2</sup> Rather, the provision arose in the House Civil and Commercial Law Committee: “The Committee modified the criteria that an individual must satisfy to be considered a ‘wrongfully imprisoned individual’ to include the condition that subsequent to sentencing and during or subsequent to imprisonment, *an error in procedure resulted in the individual’s release* as an alternative to the condition that” a court of common pleas court determined that the individual was actually innocent of the offense. Synopsis of House Committee Amendments, Sub. S.B. No. 149, 124th General Assembly (emphasis sic). In adding this alternative category for relief, the Committee did not express an intent to create a parallel process for these claims; it merely noted that it was expanding the class of potential claimants. *Id.*

A review of the fiscal analyses of the bill leads to a similar conclusion. The fiscal analyses of the bill as passed by the House and as enacted both state that, under the law as it existed before the amendment, “any individual who is determined by a court of common pleas to having been wrongfully imprisoned is entitled to recover damages from the state.” Legislative Service Commission Fiscal Note & Local Impact Statement of Sub. S.B. No. 149, 124th General Assembly, As Passed by the House and As Enacted. Neither analysis suggests that the General Assembly intended to alter the established process, nor do they discuss the cost of such a change.

The Legislative Service Commission’s bill analyses further confirm that the General Assembly did not intend to alter the existing two-step process. The analyses of the bill as

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<sup>2</sup> The documents in this section are available at:  
[http://www.legislature.state.oh.us/bills.cfmID=124\\_SB\\_149](http://www.legislature.state.oh.us/bills.cfmID=124_SB_149).

reported by the House and as enacted are substantially similar; both recite the existing law and state that the procedural error category was added merely to “[e]xpand[] the criteria that an individual must satisfy to be considered a ‘wrongfully imprisoned individual.’” Legislative Service Commission Bill Analysis of Sub. S.B. No. 149, 124th General Assembly, as Reported by House Civil and Commercial Law Committee, at Bill Summary; Final Bill Analysis at Act Summary.

The Final Bill Analysis provides further support for this conclusion. Under the heading “Content and Operation” and the subheading “Continuing and prior law,” the analysis states that:

R.C. 2743.48 provides procedures that must be followed by courts of common pleas, the Court of Claims, and individuals in reference to a wrongful imprisonment claim. When a court of common pleas determines that a person is a “wrongfully imprisoned individual” (see “*Definition*,” below), the court must provide the person with a copy of R.C. 2743.48 and orally inform the person and the person’s attorney of the person’s rights to commence a civil action against the state in the Court of Claims because of the wrongful imprisonment and to be represented in that action by counsel of choice. (R.C. 2743.48(B).)

Once a person is determined to be a wrongfully imprisoned individual by a court of common pleas, that person may file in the Court of Claims a civil action against the state to recover damages because of the wrongful imprisonment. The claimant must file the action no later than two years after the date of entry of that determination. In a civil action, the claimant may establish that the claimant is a wrongfully imprisoned individual by submitting to the Court of Claims: (1) a certified copy of the judgment entry of the court of common pleas associated with the claimant's conviction and sentencing, and (2) a certified copy of the entry of the determination of a court of common pleas that the claimant is a wrongfully imprisoned individual. If this evidence is submitted to the Court of Claims, the claimant is irrebuttably presumed to be a wrongfully imprisoned individual. (R.C. 2743.48(D), (E)(1), and (H).)

Legislative Service Commission Final Bill Analysis of Sub. S.B. 149, 124th General Assembly, at Content and Operation (emphasis sic); see also Definition heading (reciting the revised R.C. 2743.48(A), including the addition of procedural error cases under (A)(5)). This passage lays out the exact same two-step process identified by this Court and outlined above, which is not surprising considering that the section professes to describe the “continuing and prior law.”

In short, the legislative history shows that the General Assembly did not intend to allow the Court of Claims to hear both actions required to recover on a wrongful-imprisonment claim premised on procedural error. To the contrary, the legislative history is replete with references to the established two-step process for evaluating wrongful-imprisonment claims outlined above. Given the paucity of support for the Tenth District's construction of R.C. 2743.48, this Court should reject that approach.

**C. The Court of Claims is a court of limited jurisdiction; it cannot exercise jurisdiction over the declaratory judgment actions for wrongful imprisonment claims because the General Assembly did not expressly provide it with jurisdiction to do so.**

The Tenth District's approach also fails as a matter of law because it improperly expands the Court of Claims' jurisdiction. When the Tenth District noted that "[t]here is nothing in [R.C. 2743.48] that precludes an individual from filing an action directly in the Court of Claims when a court of common pleas is not required by R.C. 2305.02 to make a determination that an individual was a wrongfully imprisoned individual," *Griffith*, 2009-Ohio-2854, at ¶ 13, the court ignored the basic structure of the Court of Claims.

Unlike courts of common pleas, which are courts of general jurisdiction that may hear all matters at law and equity that have not been specifically denied to them, see *BCL Enters., Inc. v. Ohio Dep't of Liq. Control* (1997), 77 Ohio St. 3d 467, 469, the Court of Claims is a statutorily created court of limited jurisdiction, see *Steward*, 8 Ohio App. 3d at 299; see also R.C. 2743.03 (creating and detailing the jurisdiction of the Court of Claims). "As a court of limited jurisdiction, the Court of Claims enjoys only that jurisdiction specifically conferred upon it by the General Assembly." *Steward*, 8 Ohio App. 3d at 299; see also *Johns v. Univ. of Cincinnati Med. Assocs., Inc.*, 101 Ohio St. 3d 234, 2004-Ohio-824, ¶ 36 (noting that the General Assembly has the power to define the jurisdiction of the Court of Claims). In other words, the Court of

Claims may only assume jurisdiction over a case when the General Assembly has explicitly empowered it to do so.

The General Assembly knows how to expand the Court of Claims' jurisdiction to embrace a certain type of case, as it showed in the statute at issue here: "[A] wrongfully imprisoned individual has and may file a civil action against the state, in the court of claims, to recover a sum of money as described in this section, because of the individual's wrongful imprisonment. The court of claims shall have exclusive, original jurisdiction over such a civil action." See R.C. 2743.48(D). If it wanted to vest the Court of Claims with jurisdiction over both actions that must be filed to recover on a wrongful imprisonment claim premised on procedural error, the General Assembly could have said, "The Court of Claims has jurisdiction to determine whether an individual was wrongfully imprisoned as defined in R.C. 2743.48(A)(1)–(5)," or something similar. Because no such language exists, the Court of Claims lacks authority to act.

The lack of specificity in R.C. 2743.48(A)(5) and R.C. 2505.02 regarding the review of wrongful-imprisonment claims premised on procedural error cannot be used to expand the Court of Claims' jurisdiction. The General Assembly alone created the court, and it alone has the power to alter the court's jurisdiction. Because the legislature did not expressly provide the Court of Claims with the power to hear the declaratory judgment action for wrongful-imprisonment claims premised on procedural error, the court may not hear those actions.

**CONCLUSION**

For the above reasons, the State of Ohio respectfully asks this Court to reverse the Tenth District's decision.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

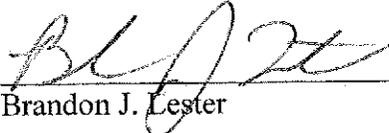
I certify that a copy of the foregoing Defendant-Appellant State of Ohio's Merit Brief has been served upon the following counsel of record by depositing it in ordinary United States mail, postage prepaid, this 28th day of December, 2009:

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Seth Nelson

  
\_\_\_\_\_  
Brandon J. Lester

ORIGINAL

In the  
**Supreme Court of Ohio 09-1363**

GERRY E. GRIFFITH, JR.,

Plaintiff-Appellee,

v.

STATE OF OHIO,

Defendant-Appellant.

Supreme Court Case No. \_\_\_\_\_

On Appeal from the  
Franklin County  
Court of Appeals,  
Tenth Appellate District

Court of Appeals Case  
No. 08AP-964

**NOTICE OF APPEAL OF APPELLANT  
STATE OF OHIO**

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**FILED**  
JUL 29 2009  
CLERK OF COURT  
SUPREME COURT OF OHIO

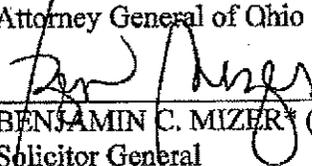
**NOTICE OF APPEAL OF APPELLANT  
STATE OF OHIO**

Appellant State of Ohio gives notice of its discretionary appeal to this Court, pursuant to Ohio Supreme Court Rule II, Section 1(A)(3), from a decision of the Franklin County Court of Appeals, Tenth Appellate District, journalized in Case No. 08AP-964 on June 18, 2009. Date-stamped copies of the Tenth District's Journal Entry and Opinion are attached as Exhibits 1 and 2, respectively, to the Appellant's Memorandum in Support of Jurisdiction.

For the reasons set forth in the accompanying Memorandum in Support of Jurisdiction, this case is one of public and great general interest.

Respectfully submitted,

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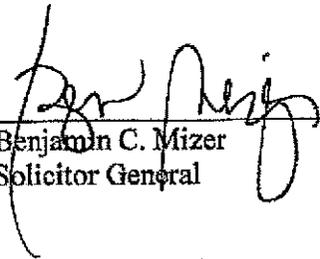
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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Notice of Appeal of Appellant State of Ohio has been served upon the following counsel of record by depositing it in ordinary United States mail, postage prepaid, this 28th day of July, 2009:

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Benjamin C. Mizer  
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20613 - T70

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

FILED  
COURT OF APPEALS  
FRANKLIN CO, OHIO

2009 JUN 18 PM 1:35  
CLERK OF COURTS

Gerry E. Griffith, Jr.,

Plaintiff-Appellant,

No. 08AP-964  
(C.C. No. 2008-07861-WI)

v.

(REGULAR CALENDAR)

The State of Ohio,

Defendant-Appellee.

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on June 16, 2009, appellant's single assignment of error is sustained, and it is the judgment and order of this court that the judgment of the Ohio Court of Claims is reversed, and this matter is remanded to that court for further proceedings in accordance with the law, consistent with this decision. Costs are assessed against appellee.

BROWN, KLATT, & CONNOR, JJ.



Judge Susan Brown

20613 - E13

FILED  
COURT OF APPEALS  
FRANKLIN CO - OHIO

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IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT 2009 JUN 16 PM 1:58  
CLERK OF COURTS

Gerry E. Griffith, Jr.,

Plaintiff-Appellant,

v

The State of Ohio,

Defendant-Appellee.

No. 08AP-964  
(C C No 2008-07861-WI)  
(REGULAR CALENDAR)

D E C I S I O N

Rendered on June 16, 2009

*Slicer Law Office, and Charles W. Slicer, III, for appellant.*

*Richard Cordray, Attorney General, and Peter E. DeMarco, for appellee.*

APPEAL from the Ohio Court of Claims

BROWN, J

{¶1} Gerry E Griffith, Jr., plaintiff-appellant, appeals from a judgment of the Ohio Court of Claims, in which the court granted the motion to dismiss filed by the State of Ohio, defendant-appellee.

{¶2} On April 2, 2004, a Cleveland school security officer witnessed appellant speaking to a female pedestrian from his vehicle. The officer spoke to the female, who police later learned was 18 years old, and the female told the police that appellant tried to get her inside his car. The officer saw appellant at a nearby gas station and spoke with

him. Appellant denied that he had tried to lure the female into his car but, instead, said he was asking her directions to his hotel, as he lived in Dayton and was unfamiliar with Cleveland. The officer gave appellant directions.

{¶3} On that same day, a 14-year-old girl was abducted from Cleveland. On April 8, 2004, the school security officer reported to police the April 2, 2004 incident with appellant. Police then obtained a "warrant," which was issued by a prosecutor, to search appellant's home. Later that day, officers from Cleveland, Dayton, and the Federal Bureau of Alcohol, Tobacco, and Firearms called appellant and told him that his home had been burglarized. When appellant arrived home, he was arrested for attempted abduction of the 18-year-old girl. Appellant was asked to sign a consent to search his home, which he did. The abducted girl was not found in the house, but drugs and a gun were discovered after a search of the entire home. The abduction charges were eventually dropped when police discovered the girl was 18 years old.

{¶4} Appellant was indicted in federal court on a firearm charge. Appellant moved to suppress evidence of the gun and drugs found in his house, claiming the consent was obtained pursuant to an unlawful arrest, and the search was beyond the scope of his consent. The federal district court eventually found the arrest to have been lawful based upon probable cause. On appeal, in *United States v. Griffith* (C.A.6, 2006), 193 Fed.Appx. 538, the Sixth Circuit Court of Appeals found that the police did not have probable cause to make the arrest, and the consent to search appellant's home was the fruit of his unlawful arrest. The circuit court remanded the matter to the district court. Appellant was released from custody in January 2007.

{¶5} On August 1, 2008, appellant filed a second amended complaint in the Court of Claims alleging he was wrongfully imprisoned pursuant to R.C. 2743.48. On August 15, 2008, the state filed a motion to dismiss, pursuant to Civ.R. 12(B)(1), claiming that the Court of Claims lacked jurisdiction over the subject matter until appellant commenced an action in the common pleas court, pursuant to R.C. 2305.02, and obtained a declaration that he was wrongfully imprisoned.

{¶6} On September 29, 2008, the Court of Claims entered an entry of dismissal, in which the court found that it did not have jurisdiction over the matter until appellant obtained a determination from the common pleas court finding that he was wrongfully imprisoned. Appellant appeals the judgment of the trial court, asserting the following assignment of error

MR. GRIFFITH COMPLIED WITH THE REQUIREMENTS SET FORTH IN THE WRONGFUL IMPRISONMENT STATUTE; THEREFORE, THE COURT OF CLAIMS ERRED WHEN IT GRANTED A MOTION TO DISMISS PURSUANT TO 12(B)(1).

{¶7} In appellant's assignment of error, appellant argues that the trial court erred when it dismissed his complaint. The only ground for dismissal cited in the state's motion to dismiss was pursuant to Civ.R. 12(B)(1). Appellate review of a trial court's decision to dismiss a case, pursuant to Civ.R. 12(B)(1), is de novo. *Crestmont Cleveland Partnership v. Ohio Dept. of Health* (2000), 139 Ohio App.3d 928, 936. De novo review means that we apply the same standards as the trial court. *GNFH, Inc. v. W Am. Ins. Co.*, 172 Ohio App.3d 127, 2007-Ohio-2722, ¶16.

{¶8} To dismiss a complaint under Civ.R. 12(B)(1), we must determine whether a plaintiff has alleged any cause of action that the court has authority to decide.

*Crestmont* at 936. Furthermore, when a trial court determines its own jurisdiction, it has authority to consider any pertinent evidentiary materials. *Nemazee v. Mt. Sinai Med. Ctr.* (1990), 56 Ohio St.3d 109, 111, fn. 3. Thus, in determining whether the plaintiff has alleged a cause of action sufficient to withstand a Civ.R. 12(B)(1) motion to dismiss, a court is not confined to the allegations of the complaint. *Southgate Dev. Corp. v. Columbia Gas Transmission Corp.* (1976), 48 Ohio St.2d 211, paragraph one of the syllabus.

{¶9} In the present case, the Court of Claims found it did not have jurisdiction over the matter because appellant failed to first file an action in the common pleas court and obtain a judgment finding that he had been wrongfully imprisoned pursuant to R.C. 2305.02 and 2743.48. R.C. 2305.02 provides.

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. If the court enters the requested determination, it shall comply with division (B) of that section.

R.C. 2743.48 provides, in pertinent 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, 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.*

(B)(1) *When a court of common pleas determines, on or after September 24, 1986, that a person is a wrongfully imprisoned individual, the court shall provide the person with a copy of this section and orally inform the person and the person's attorney of the person's rights under this section to commence a civil action against the state in the court of claims because of the person's wrongful imprisonment and to be represented in that civil action by counsel of the person's own choice*

(2) *The court described in division (B)(1) of this section shall notify the clerk of the court of claims, in writing and within seven days after the date of the entry of its determination that the person is a wrongfully imprisoned individual, of the name and proposed mailing address of the person and of the fact that the person has the rights to commence a civil action and to have legal representation as provided in this section. The clerk of the court of claims shall maintain in the clerk's office a list of wrongfully imprisoned individuals for whom notices are received under this section and shall create files in the clerk's office for each such individual.*

\*\*\*

[C](2) If a wrongfully imprisoned individual who is the subject of a court determination as described in division (B)(1) of this section does not commence a civil action under this section within six months after the entry of that determination, the clerk of the court of claims shall send a letter to the wrongfully imprisoned individual, at the address set forth in the notice received from the court of common pleas pursuant to division (B)(2) of this section or to any later address provided by the wrongfully imprisoned individual, that reminds the wrongfully imprisoned individual of the wrongfully imprisoned individual's rights under this section. Until the statute of limitations provided in division (H) of this section expires and unless the wrongfully imprisoned individual commences a civil action under this section, the clerk of the court of claims shall send a similar letter in a similar manner to the wrongfully imprisoned individual at least once each three months after the sending of the first reminder.

(D) Notwithstanding any provisions of this chapter to the contrary, a wrongfully imprisoned individual has and may file a civil action against the state, in the court of claims, to recover a sum of money as described in this section, because of the individual's wrongful imprisonment. The court of claims shall have exclusive, original jurisdiction over such a civil action. The civil action shall proceed, be heard, and be determined as provided in sections 2743.01 to 2743.20 of the Revised Code, except that if a provision of this section conflicts with a provision in any of those sections, the provision in this section controls.

(E)(1) In a civil action as described in division (D) of this section, the complainant may establish that the claimant is a wrongfully imprisoned individual by submitting to the court of claims a certified copy of the judgment entry of the court of common pleas associated with the claimant's conviction and sentencing, and a certified copy of the entry of the determination of a court of common pleas that the claimant is a wrongfully imprisoned individual. No other evidence shall be required of the complainant to establish that the claimant is a wrongfully imprisoned individual, and the claimant shall be irrebuttably presumed to be a wrongfully imprisoned individual.

(2) In a civil action as described in division (D) of this section, upon presentation of requisite proof to the court, a wrongfully imprisoned individual is entitled to receive a sum of money that equals the total of each of the following amounts:

\*\*\*

(F)(1) If the court of claims determines in a civil action as described in division (D) of this section that the complainant is a wrongfully imprisoned individual, it shall enter judgment for the wrongfully imprisoned individual in the amount of the sum of money to which the wrongfully imprisoned individual is entitled under division (E)(2) of this section.

(2) If the wrongfully imprisoned individual was represented in the civil action under this section by counsel of the wrongfully imprisoned individual's own choice, the court of claims shall include in the judgment entry referred to in division (F)(1) of this section an award for the reasonable attorney's fees of that counsel. These fees shall be paid as provided in division (G) of this section

(3) The state consents to be sued by a wrongfully imprisoned individual because the imprisonment was wrongful, and to liability on its part because of that fact, only as provided in this section. However, this section does not affect any liability of the state or of its employees to a wrongfully imprisoned individual on a claim for relief that is not based on the fact of the wrongful imprisonment, including, but not limited to, a claim for relief that arises out of circumstances occurring during the wrongfully imprisoned individual's confinement in the state correctional institution.

\*\*\*

(H) To be eligible to recover a sum of money as described in this section because of wrongful imprisonment, a wrongfully imprisoned individual shall not have been, prior to September 24, 1986, the subject of an act of the general assembly that authorized an award of compensation for the wrongful imprisonment or have been the subject of an action before the former sundry claims board that resulted in an award of compensation for the wrongful imprisonment. Additionally, to be eligible to so recover, the wrongfully imprisoned individual shall commence a civil action under this

section in the court of claims no later than two years after the date of the entry of the determination of a court of common pleas that the individual is a wrongfully imprisoned individual.

{¶10} In the present case, appellant claims nothing in R.C. 2743.48 or 2305.02 required him to first institute a civil action to determine if he was wrongfully imprisoned. We agree. As indicated above, R.C. 2743.48(A) provides that, to be a "wrongfully imprisoned individual," one must satisfy the five requirements in section (A)(1) through (A)(5). Every individual must satisfy the first four requirements in (A)(1) through (A)(4), and there is no indication in any part of section (A) that the requirements in (A)(1) through (A)(4) must be established by a court of common pleas. However, the requirement under (A)(5) has two parts separated by the disjunctive conjunction "or." "Or" is "a function word indicating an alternative between different or unlike things." *Pizza v. Sunset Fireworks Co., Inc.* (1986), 25 Ohio St.3d 1, 4-5. As written, under (A)(5), an individual must show either: (1) that an error in procedure resulted in the individual's release, or (2) it was determined by a court of common pleas that the offense of which the individual was found guilty either was not committed by the individual or was not committed by any person. There is no indication in the first alternative that a common pleas court must establish the fact that an error in procedure resulted in the individual's release. Only the second alternative explicitly indicates that a court of common pleas must determine that the offense was either not committed by the individual or was not committed by any person.

{¶11} Section (A)(5) was amended April 9, 2003. It is apparent from the grammatical structure used by the legislature that the legislature intentionally placed the burden of obtaining a common pleas determination only upon the second alternative. The prior version of R.C. 2743.48(A)(5) read:

Subsequent to his sentencing and during or subsequent to his imprisonment, it was determined by a court of common pleas 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

When the legislature amended (A)(5), it chose to place the alternative option "an error in procedure resulted in the individual's release" before the phrase "it was determined by a court of common pleas " It is well-established that, in determining the legislature's intent, we must read words and phrases in context according to the rules of grammar and common usage. *State ex rel Lee v. Kames*, 103 Ohio St 3d 559, 2004-Ohio-5718, ¶23. It must be presumed that the legislature was aware of the rules of grammar when the statute was promulgated and articulated its thoughts consistent with these rules of grammar. *Fenn v. A-Best Prods. Co.*, 10th Dist. No 07AP-404, 2007-Ohio-7145, ¶9, citing *State ex rel. Rear Door Bookstore v. Tenth Dist. Court of Appeals* (1992), 63 Ohio St.3d 354, 362. Furthermore, when the language of a statute is clear, this court must assume that the legislature meant what it said, as well as what it did not. See *Kocisko v. Charles Shutrump & Sons Co.* (1986), 21 Ohio St.3d 98, 100 (J Wright, dissenting), citing *Andrianos v. Community Traction Co.* (1951), 155 Ohio St. 47. Here, the legislature's choice of grammatical structure in amending section (A)(5) to add an alternative method of qualifying for recovery without preceding it with a requirement that one obtain a prior court determination is exceptionally persuasive

{¶12} R.C. 2305.02 supports the above distinction between the first and second alternatives in (A)(5). R.C. 2305.02 indicates that a common pleas court has exclusive, original jurisdiction to hear and determine an action by an individual who seeks a determination that the offense of which he was found guilty either was not committed by

him or was not committed by any person. R.C. 2305.02 does not require a determination by a common pleas court that an error in procedure resulted in the individual's release. If the legislature had wanted the common pleas court to make both determinations, it would have amended R.C. 2305.02 when it amended 2743.48(A)(5). See *Guider v LCI Communications Holdings Co.* (1993), 87 Ohio App.3d 412, 419 (as the legislature could have included certain language had it wanted, the court must assume that the General Assembly's failure to do such was intentional).

{¶13} Furthermore, while R.C. 2743.48(B), (C), (E), and (H) all contain some interplay between a determination by the common pleas court under R.C. 2305.02, and an action in the Court of Claims under R.C. 2743.48, there is nothing in those sections that would conflict with our above determination. The notification provisions in R.C. 2743.48(B)(1) apply only "[w]hen a court of common pleas determines \* \* \* that a person is a wrongfully imprisoned individual." Similarly, the "reminder" requirements for the Court of Claims under R.C. 2743.48(C)(2) apply only when there exists "a wrongfully imprisoned individual who is the subject of a court determination as described in division (B)(1) of this section." There is nothing in these sections that precludes an individual from filing an action directly in the Court of Claims when a court of common pleas is not required by R.C. 2305.02 to make a determination that an individual was a wrongfully imprisoned individual. Therefore, neither section (B) nor (C) requires a common pleas court determination for individuals who have been released based upon an error in procedure.

{¶14} In addition, while R.C. 2743.48(E)(1) indicates that a complainant may establish that the claimant is a wrongfully imprisoned individual by submitting to the Court

of Claims a certified copy of the common pleas court's entry that the claimant is a wrongfully imprisoned individual, this section in no way indicates that a judgment entry from the common pleas court is the sole method to demonstrate the claimant is a wrongfully imprisoned individual. Nothing in (E)(1) precludes an individual from filing an action directly in the Court of Claims seeking a determination that the individual was wrongfully imprisoned when the individual was released from incarceration based upon a procedural error. Therefore, we find this section also does not conflict with our above conclusion

{¶15} Also, although R.C. 2743.48(H) provides that, to be eligible to recover for wrongful imprisonment, the wrongfully imprisoned individual must commence a civil action under R.C. 2743.48 in the Court of Claims no later than two years after the date of the entry of the determination of a court of common pleas that the individual is a wrongfully imprisoned individual, the time limitation contained in section (H) does not indicate an individual who has been released based upon an error in procedure must obtain a determination first in the common pleas court that he is a wrongfully imprisoned individual. Thus, this section also does not conflict with our above conclusion.

{¶16} For all the above reasons, we cannot say that the Court of Claims lacked jurisdiction to consider appellant's complaint because he failed to first file an action in the common pleas court seeking a determination that he was a wrongfully imprisoned individual. Nothing in R.C. 2743.48 or 2305.02 requires such. The April 2003 amendment to R.C. 2743.48(A)(5) provides an alternative method for individuals who were released based upon an error in procedure to obtain recovery as a wrongfully imprisoned individual without first filing an action in the common pleas court. The jurisdictional parameters of

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R.C. 2305.02 are also clear. The common pleas court has exclusive, original jurisdiction only to determine whether the offense of which an individual was found guilty either was not committed by him or was not committed by any person. R.C. 2305.02 does not grant the common pleas court exclusive, original jurisdiction to determine whether an individual was released from prison based upon a procedural error, and we cannot read such into the plain language of the statute. Furthermore, no other provisions in R.C. 2305.02 or 2743.48 conflict with our conclusion that an individual who is released from incarceration based upon an error in procedure may obtain recovery as a wrongfully imprisoned individual without first filing an action in the common pleas court. Therefore, the Court of Claims erred when it dismissed appellant's action, pursuant to Civ.R. 12(B)(1), and appellant's assignment of error is sustained.

{¶17} Accordingly, appellant's assignment of error is sustained, the judgment of the Ohio Court of Claims is reversed, and this matter is remanded to that court for further proceedings in accordance with the law, consistent with this decision.

*Judgment reversed  
and cause remanded.*

KLATT and CONNOR, JJ., concur.

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COURT OF CLAIMS  
OF OHIO

2008 SEP 29 AM 11:20

## 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  
www.cco.state.oh.us

GERRY E. GRIFFITH, JR.

Plaintiff

v.

THE STATE OF OHIO

Defendant

Case No. 2008-07861-WI

Judge Clark B. Weaver Sr.

ENTRY OF DISMISSAL

On August 15, 2008, defendant filed a motion to dismiss plaintiff's complaint pursuant to Civ.R. 12(B)(1) and (6). On August 29, 2008, plaintiff filed a response.

In construing a complaint upon a motion to dismiss for failure to state a claim, the court must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190. Then, before the court may dismiss the complaint, it must appear beyond doubt that plaintiff can prove no set of facts entitling him to recovery. *O'Brien v. University Community Tenants Union* (1975), 42 Ohio St.2d 242. The standard to apply for a dismissal pursuant to Civ.R. 12(B)(1) is whether the plaintiff has alleged any cause of action cognizable by the forum. See *Avco Financial Services Loan, Inc. v. Hale* (1987), 36 Ohio App.3d 65.

In his second amended complaint, plaintiff alleges that defendant is liable to him in damages for wrongful confinement. According to plaintiff's complaint, a federal circuit court of appeals determined that plaintiff's arrest was improper and that his subsequent conviction was unconstitutional. To the extent that plaintiff claims that he is a wrongfully imprisoned individual, this court lacks jurisdiction.

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ENTRY

R.C. 2305.02 provides in relevant part:

"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."

Ohio Rev. Code Ann. § 2305.02 grants exclusive jurisdiction to the court of common pleas to hear and determine an action or proceeding that is commenced by an individual 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. *Bennett v. Ohio Dept. of Rehab. and Corr.* (1991), 60 Ohio St.3d 107; *Walden v. State* (1989), 47 Ohio St.3d 47. Once the claimant secures this determination, Ohio Rev. Code Ann. § 2743.48(D) provides that he 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 Ohio Rev. Code Ann. § 2743.48(E). *Walden*, supra.

In *Norris v. Ohio Dep't of Rehab. & Corr.*, Ct. of Cl. No. 2004-07824, 2005-Ohio-3959, this court dismissed an inmate's wrongful imprisonment action where the inmate had failed to show that he had first obtained a determination from a court of common pleas that he was a wrongfully imprisoned individual. The court stated that "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." *Id.* at ¶8, affirmed in *Norris v. Ohio Dep't of Rehab. & Corr.*, Franklin App. No. 05-AP-762, 2006-Ohio-1750.

Under the plain language of R.C. 2305.02 and case law decided thereunder, this court does not have initial jurisdiction to determine whether plaintiff is a wrongfully imprisoned individual. *Bennett*, supra. Plaintiff must first seek such a determination from a court of common pleas. *Id.* Thus, plaintiff's claim for wrongful imprisonment shall be dismissed pursuant to Civ.R. 12(B)(1).

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ENTRY

With respect to plaintiff's claim for common law false imprisonment, liability will not attach where plaintiff's confinement is authorized by a valid court order. See *Bennett*, supra. As stated above, the substance of plaintiff's claim is that his conviction was overturned on appeal. Plaintiff does not allege that defendant continued to confine him for any period of time after receiving notice that the judgment of conviction had been reversed. Based upon the facts set forth in the pleadings, it is clear that plaintiff was initially incarcerated pursuant to a lawful sentencing order and then released when his conviction was reversed. Accordingly, plaintiff has failed to state a claim for relief under a false imprisonment theory and therefore defendant's motion to dismiss is GRANTED. 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.



CLARK B. WEAVER SR.  
Judge

cc:

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FILED WITH THE SECRETARY OF STATE THROUGH NOVEMBER 10, 2009 \*\*\*  
\*\*\* ANNOTATIONS CURRENT THROUGH OCTOBER 1, 2009 \*\*\*  
\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH OCTOBER 28, 2009 \*\*\*

TITLE 23. COURTS -- COMMON PLEAS  
CHAPTER 2305. JURISDICTION; LIMITATION OF ACTIONS

Go to the Ohio Code Archive Directory

*ORC Ann. 2305.02 (2009)*

§ 2305.02. Determination of wrongful imprisonment claim

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. If the court enters the requested determination, it shall comply with division (B) of that section.

**HISTORY:**

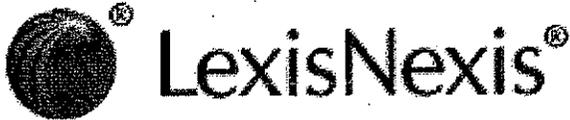
141 v H 609 (Eff 9-24-86); 142 v H 623, Eff 3-17-89.

**NOTES:**

Section Notes

*Not analogous to former RC § 2305.02 (RS § 467-1; 90 v 301; GC § 11216; Bureau of Code Revision, 10-1-53), repealed 133 v H 1201, § 1, eff 7-1-71.*

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TITLE 27. COURTS -- GENERAL PROVISIONS -- SPECIAL REMEDIES  
CHAPTER 2743. COURT OF CLAIMS  
MEDICAL CLAIM

Go to the Ohio Code Archive Directory

*ORC Ann. 2743.48 (2009)*

§ 2743.48. Civil action against state for wrongful imprisonment

(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, 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.

(B) (1) When a court of common pleas determines, on or after September 24, 1986, that a person is a wrongfully imprisoned individual, the court shall provide the person with a copy of this section and orally inform the person and the person's attorney of the person's rights under this section to commence a civil action against the state in the court of claims because of the person's wrongful imprisonment and to be represented in that civil action by counsel of the person's own choice.

(2) The court described in division (B)(1) of this section shall notify the clerk of the court of claims, in writing and within seven days after the date of the entry of its determination that the person is a wrongfully imprisoned individual, of the name and proposed mailing address of the person and of the fact that the person has the rights to commence a civil action and to have legal representation as provided in this section. The clerk of the court of claims shall maintain in the clerk's office a list of wrongfully imprisoned individuals for whom notices are received under this section and shall create files in the clerk's office for each such individual.

(C) (1) In a civil action under this section, a wrongfully imprisoned individual has the right to have counsel of the individual's own choice.

(2) If a wrongfully imprisoned individual who is the subject of a court determination as described in division (B)(1) of this section does not commence a civil action under this section within six months after the entry of that determination, the clerk of the court of claims shall send a letter to the wrongfully imprisoned individual, at the address set forth in the notice received from the court of common pleas pursuant to division (B)(2) of this section or to any later address provided by the wrongfully imprisoned individual, that reminds the wrongfully imprisoned individual of the wrongfully imprisoned individual's rights under this section. Until the statute of limitations provided in division (H) of this section expires and unless the wrongfully imprisoned individual commences a civil action under this section, the clerk of the court of claims shall send a similar letter in a similar manner to the wrongfully imprisoned individual at least once each three months after the sending of the first reminder.

(D) Notwithstanding any provisions of this chapter to the contrary, a wrongfully imprisoned individual has and may file a civil action against the state, in the court of claims, to recover a sum of money as described in this section, because of the individual's wrongful imprisonment. The court of claims shall have exclusive, original jurisdiction over such a civil action. The civil action shall proceed, be heard, and be determined as provided in *sections 2743.01 to 2743.20 of the Revised Code*, except that if a provision of this section conflicts with a provision in any of those sections, the provision in this section controls.

(E) (1) In a civil action as described in division (D) of this section, the complainant may establish that the claimant is a wrongfully imprisoned individual by submitting to the court of claims a certified copy of the judgment entry of the court of common pleas associated with the claimant's conviction and sentencing, and a certified copy of the entry of the determination of a court of common pleas that the claimant is a wrongfully imprisoned individual. No other evidence shall be required of the complainant to establish that the claimant is a wrongfully imprisoned individual, and the claimant shall be irrebuttably presumed to be a wrongfully imprisoned individual.

(2) In a civil action as described in division (D) of this section, upon presentation of requisite proof to the court, a wrongfully imprisoned individual is entitled to receive a sum of money that equals the total of each of the following amounts:

(a) The amount of any fine or court costs imposed and paid, and the reasonable attorney's fees and other expenses incurred by the wrongfully imprisoned individual in connection with all associated criminal proceedings and appeals, and, if applicable, in connection with obtaining the wrongfully imprisoned individual's discharge from confinement in the state correctional institution;

(b) For each full year of imprisonment in the state correctional institution for the offense of which the wrongfully imprisoned individual was found guilty, forty thousand three hundred thirty dollars or the adjusted amount

determined by the auditor of state pursuant to *section 2743.49 of the Revised Code*, and for each part of a year of being so imprisoned, a pro-rated share of forty thousand three hundred thirty dollars or the adjusted amount determined by the auditor of state pursuant to *section 2743.49 of the Revised Code*;

(c) Any loss of wages, salary, or other earned income that directly resulted from the wrongfully imprisoned individual's arrest, prosecution, conviction, and wrongful imprisonment;

(d) The amount of the following cost debts the department of rehabilitation and correction recovered from the wrongfully imprisoned individual who was in custody of the department or under the department's supervision:

(i) Any user fee or copayment for services at a detention facility, including, but not limited to, a fee or copayment for sick call visits;

(ii) The cost of housing and feeding the wrongfully imprisoned individual in a detention facility;

(iii) The cost of supervision of the wrongfully imprisoned individual;

(iv) The cost of any ancillary services provided to the wrongfully imprisoned individual.

(F) (1) If the court of claims determines in a civil action as described in division (D) of this section that the complainant is a wrongfully imprisoned individual, it shall enter judgment for the wrongfully imprisoned individual in the amount of the sum of money to which the wrongfully imprisoned individual is entitled under division (E)(2) of this section. In determining that sum, the court of claims shall not take into consideration any expenses incurred by the state or any of its political subdivisions in connection with the arrest, prosecution, and imprisonment of the wrongfully imprisoned individual, including, but not limited to, expenses for food, clothing, shelter, and medical services.

(2) If the wrongfully imprisoned individual was represented in the civil action under this section by counsel of the wrongfully imprisoned individual's own choice, the court of claims shall include in the judgment entry referred to in division (F)(1) of this section an award for the reasonable attorney's fees of that counsel. These fees shall be paid as provided in division (G) of this section.

(3) The state consents to be sued by a wrongfully imprisoned individual because the imprisonment was wrongful, and to liability on its part because of that fact, only as provided in this section. However, this section does not affect any liability of the state or of its employees to a wrongfully imprisoned individual on a claim for relief that is not based on the fact of the wrongful imprisonment, including, but not limited to, a claim for relief that arises out of circumstances occurring during the wrongfully imprisoned individual's confinement in the state correctional institution.

(G) The clerk of the court of claims shall forward a certified copy of a judgment under division (F) of this section to the president of the controlling board. The board shall take all actions necessary to cause the payment of the judgment out of the emergency purposes special purpose account of the board.

(H) To be eligible to recover a sum of money as described in this section because of wrongful imprisonment, a wrongfully imprisoned individual shall not have been, prior to September 24, 1986, the subject of an act of the general assembly that authorized an award of compensation for the wrongful imprisonment or have been the subject of an action before the former sundry claims board that resulted in an award of compensation for the wrongful imprisonment. Additionally, to be eligible to so recover, the wrongfully imprisoned individual shall commence a civil action under this section in the court of claims no later than two years after the date of the entry of the determination of a court of common pleas that the individual is a wrongfully imprisoned individual.

#### HISTORY:

141 v H 609 (Eff 9-24-86); 142 v H 623 (Eff 3-17-89); 145 v H 571 (Eff 10-6-94); 149 v S 149, Eff 4-9-2003.