

In the
Supreme Court of Ohio

12-0565

LANG DUNBAR,

Plaintiff-Appellee,

v.

STATE OF OHIO,

Defendant-Appellant.

: Case No. _____
:
:
: On Appeal from the
: Cuyahoga County
: Court of Appeals,
: Eighth Appellate District
:
:
: Court of Appeals
: Case No. 97364
:

MEMORANDUM IN SUPPORT OF JURISDICTION OF
DEFENDANT-APPELLANT STATE OF OHIO

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INTRODUCTION

This case concerns the eligibility criteria for wrongfully imprisonment claims. The General Assembly has created a cause of action only for claimants who are blameless. As this Court has explained, the core principle of the wrongful-imprisonment statute is to “separate those who were wrongfully imprisoned from those who have merely avoided criminal liability.” *Walden v. State*, 47 Ohio St. 3d 47, 52 (1989).

The Eighth District ignored both that core principle of blamelessness and the plain text of the wrongful-imprisonment statute when it determined that Lang Dunbar qualifies as a wrongfully imprisoned individual. Two statutory requirements forbid Dunbar’s recovery. First, only claimants who “did not plead guilty to” their charged crimes may recover compensation. R.C. 2743.48(A)(2). Dunbar pleaded guilty to abduction, but the court of appeals nevertheless allowed him to recover. Second, the statute, as interpreted by this Court, also requires that claimants “were not engaging in any other criminal conduct arising out of the incident for which they were initially charged.” *Gover v. State*, 67 Ohio St. 3d 93, 95 (1993); R.C. 2743.48(A)(4). Dunbar violently beat his fiancée in the same incident that gave rise to his abduction charge, but the Eighth District nevertheless allowed him to recover. If permitted to stand, the decision below will invite wrongful-imprisonment actions from individuals who “merely avoided criminal liability,” contrary to the General Assembly’s intent and this Court’s precedents.

For three reasons, the Court should grant review over this case. *First*, the Eighth District’s decision paves the way for inconsistent results around the State. The decision below and a decision from the Fourth District have held that guilty pleas vacated on appeal do not bar wrongful-imprisonment actions. But a recent decision from the Tenth District held that a guilty plea later set aside on appeal *does* bar a wrongful-imprisonment claim. These decisions cannot be reconciled, and this Court should resolve the disagreement now.

Second, the decision below dramatically expands the class of people eligible to recover compensation as wrongfully imprisoned individuals. The text of the wrongful-imprisonment statute reflects the General Assembly's intent to define wrongful imprisonment narrowly and to allow recovery only for those who are blameless. The statute denies compensation to those who pleaded guilty and those who engaged in other criminal conduct arising out of the incident for which they were initially charged. But by extending eligibility to these two groups, the decision below presents questions of public and great general interest.

Allowing those who pleaded guilty to prevail in wrongful-imprisonment actions is especially notable because of the prevalence of plea bargaining and multiple-act incidents. Guilty pleas lead to 94 percent of felony convictions in state courts, and there are numerous cases where an individual might escape criminal liability for one particular charge but still be blameworthy of other criminal conduct arising out of the same incident. If the Eighth District's decision stands, the class of wrongfully imprisoned individuals, and costly State payouts, will balloon to include these excluded groups. These two expansions of eligibility require this Court's review.

Third, this case presents an ideal vehicle for considering the recurring issues regarding wrongful-imprisonment eligibility. The Eighth District's opinion presents two pure questions of law: Notwithstanding the statute's requirement that claimants "not plead guilty to" their charged crimes, may wrongful-imprisonment claimants recover compensation after they have entered guilty pleas? And notwithstanding *Gover*'s requirement that claimants "were not engaging in any other criminal conduct arising out of the incident for which they were initially charged," may a claimant recover compensation if he was engaging in domestic violence during the same

incident in which an abduction charge arose? These questions require an answer now, and this case presents them cleanly.

For these reasons, the Court should accept review and reverse.

STATEMENT OF THE CASE AND FACTS

A. Ohio’s wrongful-imprisonment statute requires claimants to prove that they did not plead guilty and that they did not engage in other criminal conduct arising out of the incident for which they were initially charged.

The State of Ohio has enacted a narrow waiver of its sovereign immunity, allowing wrongfully imprisoned individuals to recover compensation from the State if they meet the requirements under R.C. 2743.48. This statute sets forth a two-step process. First, a common pleas court must determine—and issue a declaratory judgment—that a claimant is a wrongfully imprisoned individual. R.C. 2743.48(A). Then the claimant can seek damages from the State in the Court of Claims. R.C. 2743.48(D).

As part of the first stage—the declaratory stage—claimants bear the burden of proving several eligibility criteria. In this Court’s words, this process “separate[s] those who were wrongfully imprisoned from those who have merely avoided criminal liability.” *Walden*, 47 Ohio St. 3d at 52. Claimants must, for example, prove that an appellate court vacated, dismissed, or reversed their convictions. R.C. 2743.48(A)(2), (4). They must prove that they did not plead guilty to their charged offenses. R.C. 2743.48(A)(2). And they must prove that they did not “engag[e] in any other criminal conduct arising out of the incident for which they were initially charged.” *Gover*, 67 Ohio St. 3d at 95 (interpreting R.C. 2743.48(A)(4)). Claimants who fail to satisfy these requirements cannot recover compensation in the Court of Claims. R.C. 2743.48(E)(1).

B. Lang Dunbar pleaded guilty to abduction and committed the crime of domestic violence during the same incident that gave rise to his abduction charge.

On November 6, 2004, Davida Moore (then known as Davida Vassar) gave \$25 to Lang Dunbar to buy a toy for their daughter's birthday. *State v. Dunbar (Dunbar II)*, No. 92262, 2010-Ohio-239 ¶ 12 (8th Dist.). When Dunbar returned the next day with neither a toy nor the money, an argument broke out that soon led to violence. *Id.* Dunbar punched Moore in the face and head until she fell to the floor. *Id.* ¶ 3. Undaunted, he grabbed Moore and torqued her legs, causing severe pain. *State v. Dunbar (Dunbar I)*, No. 87317, 2007-Ohio-3261 ¶ 2 (8th Dist.). Moore curled into the fetal position to protect herself, at which point Dunbar kicked her repeatedly. *Id.*

Dunbar eventually stopped the beating and put on a remorseful face, apologizing to Moore and telling her that he had “snapped.” *Dunbar II*, 2010-Ohio-239 ¶¶ 3, 13. He then “instructed” Moore not to leave the house, not to call anyone, and not to answer the door, *id.* ¶¶ 3, 13, “because he did not want others to see what he had done to her.” *Dunbar I*, 2007-Ohio-3261 ¶ 2. Moore did not leave the house for four or five days. *Dunbar II*, 2010-Ohio-239 ¶ 22. When she finally left the house—to take their children to day care—she did so only after her wounds had healed. *Id.*

Roughly eight days later, Moore filed a complaint with the Cleveland Police Department. App. Op. ¶ 3. The next month, Dunbar pleaded no contest to one count of domestic violence in Cleveland Municipal Court, and the court sentenced him to 180 days in jail. *Id.* A Cuyahoga County grand jury subsequently indicted him on three counts of abduction and one count of domestic violence arising out of the November 7 incident. *Id.* ¶ 4. Those charges form the basis of Dunbar's claim in this case.

The State negotiated a plea agreement with Dunbar: If Dunbar would plead guilty to one count of abduction, then the State would drop the other three charges and recommend a sentence with no imprisonment. *Dunbar I*, 2007-Ohio-3261 ¶ 5. On June 13, 2005, Dunbar entered the plea, and the State recommended the agreed-upon sentence, but the trial court sentenced Dunbar to two years of imprisonment. *Id.* ¶¶ 6-8. The Eighth District vacated Dunbar's conviction on the ground that the trial court should have either warned "Dunbar of the potential for prison at the plea hearing or give[n] him the opportunity to withdraw his guilty plea at the sentencing hearing." *Id.* ¶ 141.

On remand, Dunbar's case proceeded to trial. A jury convicted Dunbar of one count of abduction, and the court sentenced him to five years in prison. App. Op. ¶ 5. Once again, however, the Eighth District vacated Dunbar's conviction, this time on the ground that there was insufficient evidence to support his abduction conviction. *Id.*

Dunbar then initiated this action seeking a declaration that he is a "wrongfully imprisoned individual." The trial court granted Dunbar's motion for summary judgment. On appeal, the State pressed two primary arguments. First, Dunbar's 2005 guilty plea renders him ineligible for "wrongfully imprisoned individual" status because the General Assembly has limited eligibility to claimants who "did not plead guilty." R.C. 2743.48(A)(2); *see* App. Op. ¶ 12. Second, Dunbar cannot be declared a wrongfully imprisoned individual because his abduction charge arose out of the same incident as his domestic-violence conviction, and this Court has held that claimants must prove that "they were not engaging in any other criminal conduct arising out of the incident for which they were initially charged." *Gover*, 67 Ohio St. 3d at 95; *see* App. Op. ¶ 18. (Before the court of appeals, the State also raised an issue regarding the standard of proof a claimant must meet to prove the elements of a wrongful-imprisonment

claim. This Court recently accepted jurisdiction over a case raising this issue. *See Doss v. State*, No. 2012-0162, *jurisdictional appeal accepted*, 2012-Ohio-1501 (Apr. 4, 2012)). The Eighth District disregarded these arguments and affirmed. The State now seeks to appeal that decision.

THIS CASE IS OF PUBLIC AND GREAT GENERAL INTEREST

A. The Court should grant review because the decision below creates the potential for inconsistent results around the State.

The error below is at odds with decisions from other Ohio courts of appeals and therefore risks inconsistent results. Whereas two appellate courts have held that guilty pleas later vacated on appeal do not bar wrongful-imprisonment actions, another appellate court has denied a wrongful-imprisonment claim in light of a later-vacated guilty plea. *Compare* App. Op. ¶ 16, *and State v. Moore*, 165 Ohio App. 3d 538, 2006-Ohio-114 ¶¶ 23-24 (4th Dist.) (not barring action), *with McGrath v. State*, No. 11AP-482, 2011-Ohio-6391 ¶ 7 (10th Dist.) (barring action).

In *Moore*, the claimant had pleaded guilty to murder in his criminal case. When he later learned of gunshot residue tests that exculpated him, Moore moved to withdraw his guilty plea. *Moore*, 2006-Ohio-114 ¶¶ 2-3. The trial court granted his motion on the grounds that Moore received ineffective assistance of counsel and that he did not knowingly and voluntarily enter his plea. *Id.* ¶ 3. A jury then found him not guilty. *Id.* ¶ 5. In his ensuing wrongful-imprisonment action, Moore claimed that the no-guilty-plea requirement did not preclude his claim. The Fourth District agreed, holding that Moore’s withdrawn guilty plea did “not exist for purposes of determining whether [he] qualifies to seek compensation pursuant to R.C. 2743.48.” *Id.* ¶ 24.

In this case, the Eighth District expressly adopted the Fourth District’s reasoning. In determining that the no-guilty-plea requirement did not preclude Dunbar’s claim, the court adopted a “liberal construction.” App. Op. ¶ 16. “Because a void guilty plea has no effect at

law,” the Eighth District reasoned, “it does not exist for purposes of determining whether a person has the right to seek compensation under R.C. 2743.48.” *Id.*

In contrast, the Tenth District in *McGrath* held that a guilty plea later set aside on appeal *does* bar a wrongful-imprisonment action. *McGrath*, 2011-Ohio-6391 ¶ 7. In McGrath’s criminal action, the trial court initially found him incompetent to stand trial. *State v. McGrath*, No. 91261, 2009-Ohio-1361 ¶ 3 (8th Dist.). Five months later, a new psychiatric evaluation determined that McGrath had been restored to competency. *Id.* ¶ 4. McGrath moved to change his plea to guilty, and the trial court accepted his new plea without making an explicit competency determination. *Id.* ¶ 5. The Eighth District therefore vacated his conviction. *Id.* ¶¶ 21, 23-24. When McGrath brought a wrongful-imprisonment action, both the trial court and the Tenth District held that McGrath was not a wrongfully imprisoned individual because he had pleaded guilty, even though his guilty plea was set aside on appeal. *McGrath*, 2011-Ohio-6391 ¶ 7 (opinion of Tyack, J.).

These decisions cannot be reconciled. If *McGrath* arose in the Eighth or Fourth Districts, it would have come out the other way. To be sure, the *McGrath* court purported to issue a narrow ruling based on the particular facts of that case. *See id.* It did not offer a broad rule explaining why vacated guilty pleas preclude wrongful-imprisonment actions. But the fact that *McGrath* held that a guilty plea later vacated on appeal *ever* precludes a wrongful-imprisonment action conflicts with *Moore* and the decision below. Unless and until this Court clarifies the effect on a wrongful-imprisonment action of a guilty plea vacated on appeal, different rules will apply in different courts of appeals.

B. The Court should grant review because the decision below dramatically expands the class of people who can recover as wrongfully imprisoned individuals.

The decision below expanded the class of people who can recover as wrongfully imprisoned individuals, and it did so along two distinct trajectories. First, it made eligible those who pleaded guilty in their underlying criminal cases. Second, it expanded eligibility to those who engaged in other criminal conduct arising out of the incident for which they were initially charged. These two expansions fundamentally alter wrongful-imprisonment law.

Until now, only individuals convicted after trial or pursuant to a no-contest plea could succeed in wrongful-imprisonment actions. The decision below and the decision in *Moore*, however, expanded eligibility to claimants who pleaded guilty in their criminal cases. This expansion will affect many cases, due to the prevalence of guilty pleas. Ninety-four percent of felony convictions in state courts result from guilty pleas. *See* Dep't of Justice, Bureau of Justice Statistics, *Felony Sentences in State Courts, 2006—Statistical Tables*, at 1, 24 (rev. Nov. 22, 2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/fssc06st.pdf>. Allowing those who have pleaded guilty to bring wrongful-imprisonment actions invites an avalanche of damages claims against the State.

The Eighth District observed that Dunbar's guilty plea was vacated on appeal. True enough. That fact, however, does not make his case rare. To the contrary, it makes his case like every other wrongful-imprisonment case in which the claimant pleaded guilty. The wrongful-imprisonment statute requires that a claimant's conviction was "vacated or . . . dismissed, or reversed on appeal." R.C. 2743.48(A)(4). That means every wrongful-imprisonment claimant who pleaded guilty in his underlying criminal action will have had his guilty plea vacated as well. This reality is precisely what makes this case so important: Dunbar's circumstances exemplify those of every claimant who brings a wrongful-imprisonment action following a guilty

plea. Every single one will have pleaded guilty, and every single one will have had his guilty plea vacated on appeal. Far from being a reason to deny jurisdiction, the fact that Dunbar's guilty plea was vacated on appeal amplifies the need for this Court's review.

Expanding eligibility to those who engaged in other criminal conduct arising out of the incident for which they were initially charged will also result in a surge of litigation. Individuals who escape criminal liability because their conduct does not meet the technical definition of one, charged crime commonly commit some other, distinct crime. For instance, defendants who escape criminal liability because they do not meet the technical definition of safecracking cannot be deemed wrongfully imprisoned when they also have committed burglary. *See Gover*, 67 Ohio St. 3d at 96. Defendants who escape criminal liability because they do not meet the technical definition of drug trafficking cannot be deemed wrongfully imprisoned when they also have committed conspiracy to traffic in drugs, money laundering, or engage in a pattern of corrupt activity. *See Ramirez v. State*, No. WD-02-075, 2004-Ohio-480, at 6-7 (6th Dist.) (Lanzinger, J.). The court below held that *Gover* did not bar Dunbar's claim because "Dunbar committed the domestic violence offense before the actions involving the alleged abduction and had completed his sentence for the domestic violence conviction before the abduction conviction arose." App. Op. ¶ 20. This characterization narrows *Gover*'s holding beyond its terms and purposes, and it opens the courthouse doors to claimants who committed other crimes during the same incidents that gave rise to their original charges.

The increase in litigation that will result from the decision below affects Ohio taxpayers. A successful claimant in a wrongful-imprisonment action is entitled to \$47,823.12 per year of imprisonment. R.C. 2743.48(E)(2)(b). The State also pays successful claimants' lost wages, attorney's fees, court costs, expenses, and other damages. R.C. 2743.48(E)(2)(c)-(d). That

means wrongful-imprisonment claimants can receive judgments and settlements in the hundreds of thousands—and even millions—of dollars. By expanding the class of individuals eligible to recover in wrongful-imprisonment actions, the decision below will result in many more damages actions. With this much taxpayer money at stake, this Court—not the intermediate courts of appeals—should conclusively interpret the eligibility criteria for wrongful imprisonment.

C. This case offers the most suitable vehicle for deciding whether the Eighth District’s rule is correct.

This case squarely implicates recurring issues regarding the eligibility criteria for wrongful-imprisonment claimants. The Eighth District held that claimants may recover compensation after they have entered a guilty plea, even though R.C. 2743.48 requires that claimants “not plead guilty to” their charged crime. See App. Op. ¶ 16. It also held that claimants may recover compensation if they were engaging in domestic violence during the same incident out of which their abduction charge arose, even though *Gover* requires that claimants prove they “were not engaging in any other criminal conduct arising out of the incident for which they were initially charged.” See *id.* ¶ 20. Whether those outcomes are faithful to the wrongful-imprisonment scheme is a pure question of law cleanly presented by this case.

Unlike this case, *McGrath v. State*, which deals with the effect of a guilty plea on a wrongful-imprisonment claim, suffers from numerous vehicle problems. The Tenth District’s opinion in that case is splintered—each of the panel members wrote an opinion that no other judge signed—which presents unnecessary complexities. As an initial matter, this Court would need to assemble the Tenth District’s holding from these spare parts. Furthermore, the *McGrath* plurality gave no clear indication why it rejected McGrath’s argument. Judge Tyack’s opinion suggests that the particular facts of the case—namely that McGrath’s plea was set aside on a technical error—drove his decision. See *McGrath*, 2011-Ohio-6391 ¶ 7 (opinion of Tyack, J.).

But Judge Klatt’s opinion laid down a more sweeping rule regarding the effect of guilty pleas, concluding “that because the appellant pled guilty to the offense, he did not satisfy the requirement contained in R.C. 2743.48(A)(2).” *Id.* ¶ 10 (Klatt, J., concurring). These unnecessary complexities make *McGrath* a particularly unsuitable vehicle for review.

In addition, the jurisdictional memorandum in *McGrath* presents only a single question concerning the effect of a vacated guilty plea on a wrongful-imprisonment claimant’s right to recovery. It raises no issue concerning the scope of *Gover*. Because this case presents both questions, it offers a fuller opportunity for this Court to clarify the eligibility guidelines for wrongfully imprisoned individuals. In sum, the Court should grant review in this case and deny review in *McGrath*.

ARGUMENT

Appellant’s Proposition of Law No. 1:

R.C. 2743.48(A)(2) bars an action for wrongful imprisonment when the claimant pleads guilty, including in cases where the claimant’s conviction was vacated on appeal.

The decision below cannot be squared with the plain text of Ohio’s wrongful-imprisonment statute. That text allows a claimant to recover compensation only if he “was found guilty of, *but did not plead guilty to*, [the charged offense] or a lesser-included offense.” R.C. 2743.48(A)(2) (emphasis added). The text mentions no contingencies and no exceptions. It is easy to see why the General Assembly would not want those who pleaded guilty to recover as wrongfully imprisoned individuals. The legislature waived the State’s sovereign immunity to compensate only the blameless. Because those who plead guilty necessarily admit to having engaged in criminal behavior, the General Assembly made the policy decision that they do not deserve compensation, even if a court later vacates their guilty pleas. The State’s reading therefore respects the core principle of the wrongful-imprisonment scheme: to “separate those

who were wrongfully imprisoned from those who have merely avoided criminal liability.” *Walden*, 47 Ohio St. 3d at 52.

Not only did the Eighth District’s interpretation ignore the plain meaning and purpose of R.C. 2743.48, but that interpretation is critically undermined by the overall structure of the statutory scheme. A cardinal rule of statutory interpretation provides that a statute “must be construed as a whole and given such interpretation as will give effect to every word and clause in it.” *State ex rel. Myers v. Bd. of Educ.*, 95 Ohio St. 367, 372-73 (1917); *see also* R.C. 1.47(B) (directing courts to presume that the “entire statute is intended to be effective”). Here, the State’s construction satisfies this canon, whereas the court of appeals’ interpretation renders the no-guilty-plea requirement utterly superfluous.

Every successful wrongful-imprisonment claimant will have had his conviction “vacated or . . . dismissed, or reversed on appeal.” R.C. 2743.48(A)(4). It follows that every wrongful-imprisonment claimant who pleaded guilty in his underlying criminal action will have had his guilty plea vacated. Common sense precludes a conclusion, like the Eighth District’s holding, that the no-guilty-plea requirement does not apply where a claimant’s conviction has been vacated on appeal. That describes *all* wrongful-imprisonment actions. To hold that the no-guilty-plea requirement does not apply where a claimant’s conviction has been vacated on appeal is to hold that the no-guilty-plea requirement never applies. At bottom, the Eighth District’s interpretation renders the phrase “did not plead guilty to” superfluous.

The realities of the criminal-justice system prove the point. This Court has identified only five issues that a defendant may raise on appeal after he has pleaded guilty: (1) that the defendant did not knowingly and voluntarily enter his plea; (2) that he received ineffective assistance of counsel when he entered his plea; (3) that the court did not have jurisdiction to

accept his plea; (4) that the statute of conviction is unconstitutional; and (5) that his conviction violates the Double Jeopardy Clause. See *State v. Fitzpatrick*, 102 Ohio St.3d 321, 2004-Ohio-3167 ¶¶ 78-79. In each of those circumstances, if the defendant succeeds on appeal the court will vacate both his conviction and his guilty plea. See, e.g., *State v. Sarkozy*, 117 Ohio St. 3d 86, 2008-Ohio-509, syllabus ¶ 2 (If a defendant did not knowingly and voluntarily enter his plea, “the reviewing court must *vacate the plea* and remand the cause.” (emphasis added)).

Because the wrongful-imprisonment statute expressly contemplates that claimants’ convictions have been vacated, the Eighth District’s decision rendered the phrase “but did not plead guilty to” superfluous. Such an interpretation cannot stand.

The Eighth District did not rely on any statutory text for the proposition that the no-guilty-plea requirement does not apply where a claimant’s conviction has been vacated on appeal. Instead it relied on *Moore*, which adopted a “liberal construction” of the statute. *Moore*, 2006-Ohio-114 ¶ 24; App. Op. ¶ 16. Courts may not, however, “ignore the plain language of a statute under the guise of statutory interpretation or liberal or narrow construction.” *State ex rel. Massie v. Bd. of Educ.*, 76 Ohio St. 3d 584, 588 (1996) (per curiam). “It is the duty of the court to give effect to the words used and not to insert words not used.” *State ex rel. Cuyahoga Cnty. v. State Pers. Bd. of Review*, 82 Ohio St. 3d 496, 499 (1998) (per curiam). The Eighth District’s “liberal construction” cannot defeat the statute’s plain meaning: All guilty pleas, even those later vacated on appeal, bar recovery.

Appellant's Proposition of Law No. 2:

To recover in a wrongful-imprisonment action, claimants must prove that they were not engaging in any other criminal conduct arising out of the incident for which they were initially charged.

Since it first construed Ohio's wrongful-imprisonment statute, this Court has recognized the purpose of R.C. 2743.48: to "separate those who were wrongfully imprisoned from those who have merely avoided criminal liability." *Walden*, 47 Ohio St. 3d at 52. Consistent with that purpose, the General Assembly has required claimants to prove that "they were not engaging in any other criminal conduct arising out of the incident for which they were initially charged." *Gover*, 67 Ohio St. 3d at 95.

Dunbar exemplifies an individual who "merely avoided criminal liability." His conviction for domestic violence arose out of the same incident for which he was charged with abduction: In the same encounter in which he beat his fiancée, he commanded her not to leave the house. Although his warning turned out not to meet the technical definition of abduction, he committed domestic violence in the same incident. *Gover* and R.C. 2743.48(A)(4) therefore bar him from recovering as a wrongfully imprisoned individual.

To try to justify its holding on this score, the Eighth District noted that Dunbar "completed his sentence for the domestic violence conviction before the abduction conviction arose." App. Op. ¶ 20. But that is a total non sequitur. That Dunbar's sentence for his domestic-violence conviction ended before he was convicted of abduction says nothing about whether the domestic-violence and abduction convictions arose out of the same incident. The Eighth District insists that "[o]nce someone completes a prison sentence and has served his debt to society, he is entitled to freedom." App. Op. ¶ 20. Undoubtedly so. But that sheds no light on whether he is entitled to money damages. The statute, as interpreted by this Court, requires

that claimants “were not engaging in any other criminal conduct arising out of the incident for which they were initially charged.” *Gover*, 67 Ohio St. 3d at 95. Dunbar cannot meet that standard—the only standard relevant here.

The Eighth District has one final arrow in its quiver, but it too falls short of the mark. In the court’s view, “Dunbar committed his domestic violence offense before the actions involving the alleged abduction.” App. Op. ¶ 20. Apparently the court of appeals believed that the criminal behavior must be simultaneous to bar a wrongful-imprisonment action. Nothing in *Gover* establishes such a requirement. In that case, this Court used broader language: “*arising out of the incident* for which they were initially charged.” *Gover*, 67 Ohio St. 3d at 95 (emphasis added). Temporal synchronicity is not the test; “arising out of the [same] incident” is. For good reason: Several related crimes arise out of the same incident but do not occur simultaneously. Surely a person who assaults a prison guard and then escapes from prison satisfies the *Gover* rule even though he did not commit the offenses in the same moment. A person who manufactures a controlled substance and then distributes it does likewise. So too for a person who abuses a child and then makes a false report that another individual committed the abuse.

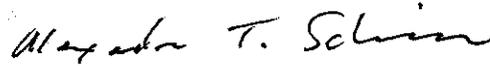
If the Eighth District’s rule correctly stated the law, the fact that a person committed one of those crimes would not preclude him from recovering as a wrongfully imprisoned individual if a court of appeals vacated his conviction for the other crime. No court has ever taken such a crabbed reading of *Gover*. The court below gives no good reason for making this case the first.

CONCLUSION

For these reasons, the Court should accept jurisdiction over this case and reverse.

Respectfully submitted,

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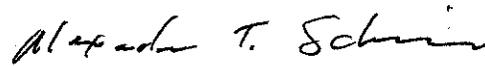
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum in Support of Jurisdiction of Defendant-Appellant State of Ohio was served by U.S. mail this 5th day of April, 2012, upon the following counsel:

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EXHIBIT A

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 97364

LANG DUNBAR

PLAINTIFF-APPELLEE

vs.

STATE OF OHIO

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-734290

BEFORE: Cooney, J., Blackmon, A.J., and Sweeney, J.

RELEASED AND JOURNALIZED: February 23, 2012



COLLEEN CONWAY COONEY, J.:

{¶1} Defendant-appellant, the state of Ohio ("the State"), appeals the trial court's determination that plaintiff-appellee, Lang Dunbar ("Dunbar"), was a "wrongfully imprisoned individual" pursuant to R.C. 2743.48. We find no merit to the appeal and affirm.

{¶2} The facts giving rise to this declaratory judgment action are not in dispute. On November 7, 2004, Dunbar struck his live-in fiancée, Davida Moore ("Moore"), in the face and head. He also twisted her legs and kicked her. Immediately following the incident, Dunbar became remorseful, apologized, and instructed Moore not to leave the house or answer the door.

{¶3} On November 20, 2004, Moore filed a complaint against Dunbar with the Cleveland police, and Dunbar was subsequently charged with domestic violence. Dunbar pled no contest to the domestic violence charge in Cleveland Municipal Court, and the court sentenced him to 180 days in jail.

{¶4} While Dunbar was serving his jail sentence, the Cuyahoga County Grand Jury indicted him on three counts of abduction and one count of domestic violence arising from the same November 7, 2004 incident. Dunbar negotiated a plea agreement wherein he agreed to plead guilty to one count of abduction in exchange for community control sanctions. The court accepted the plea with full knowledge of its terms but nevertheless imposed a two-year sentence. On

appeal, this court found that Dunbar knowingly, intelligently, and voluntarily entered into the plea agreement and pled guilty in accordance with its terms. However, this court determined that the trial court erred in imposing a prison sentence in contravention of the plea agreement without affording Dunbar the opportunity to withdraw his plea. *State v. Dunbar*, 8th Dist. No. 87317, 2007-Ohio-3261, ¶ 141 (“*Dunbar I*”). Therefore, we directed that his plea be vacated. *Id.* at ¶ 193.

{¶5} On remand, a jury convicted Dunbar of one count of abduction, and the court sentenced him to a five-year prison term.¹ This court again reversed Dunbar’s conviction, this time because it found there was insufficient evidence to support the conviction. *State v. Dunbar*, 8th Dist. No. 92262, 2010-Ohio-239, ¶ 30 (“*Dunbar II*”).

{¶6} In our opinion in *Dunbar II*, we recounted Moore’s testimony that after the domestic violence incident, Dunbar told her not to leave the house or answer the door “because of the way [her] face looked.” Moore stated that during the relevant time period, Dunbar never threatened her, was not violent toward her, but instead, repeatedly apologized for the incident. Moore further testified that, during the relevant time period, Dunbar left her alone in the

¹Dunbar had been in prison for more than two years when the jury trial commenced in September 2008.

house for extended periods of time. Because there was no evidence that Dunbar locked Moore in the house each time he left, this court concluded that Moore had the opportunity to leave or summon help, and thus there was insufficient evidence to support the abduction conviction. Dunbar was subsequently ordered discharged from prison.

{¶7} On August 16, 2010, Dunbar filed the instant case seeking a declaration that he was a “wrongfully imprisoned individual” pursuant to R.C. 2743.48(A). This determination is a prerequisite for filing a claim for damages against the State in the Court of Claims. R.C. 2743.48(D). The parties submitted cross-motions for summary judgment. The trial court granted Dunbar’s motion for summary judgment, declared him a “wrongfully imprisoned individual,” and denied the State’s motion for summary judgment. The State now appeals, raising two assignments of error.

{¶8} In its first assignment of error, the State argues the trial court erred in granting Dunbar’s motion for summary judgment and declaring him a “wrongfully imprisoned individual.” The State contends that Dunbar’s initial guilty plea to the abduction charge precludes him from qualifying as a “wrongfully imprisoned individual.” In its second assignment of error, the State argues the trial court erred in denying its motion for summary judgment because Dunbar failed to prove his innocence by a preponderance of the

evidence. We address these two assigned errors together because they are interrelated.

{¶9} An appellate court reviews a trial court's decision on a motion for summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Summary judgment is appropriate when, construing the evidence most strongly in favor of the nonmoving party, (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, that conclusion being adverse to the nonmoving party. *Zivich v. Mentor Soccer Club, Inc.*, 82 Ohio St.3d 367, 369-370, 696 N.E.2d 201 (1998), citing *Horton v. Harwick Chem. Corp.*, 73 Ohio St.3d 679, 653 N.E.2d 1196 (1995), paragraph three of the syllabus.

{¶10} Prior to filing suit in the Court of Claims for damages for wrongful imprisonment, a petitioner must obtain a declaratory judgment in the court of common pleas certifying that the petitioner was a "wrongfully imprisoned individual." R.C. 2743.48. To obtain the declaratory judgment, the petitioner must establish that: (1) he was convicted of a felony; (2) he was sentenced to prison for that conviction; (3) the conviction was vacated, dismissed, or reversed; (4) no further prosecution was attempted or allowed for that conviction or any act associated with that conviction; and (5) the offense of which the petitioner

was found guilty was not committed by the petitioner or was not committed at all. *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 701 N.E.2d 1002 (1998); R.C. 2305.02; R.C. 2743.48(A).

{¶11} However, the petitioner seeking to establish a claim for wrongful imprisonment must produce more evidence than a judgment of acquittal, which is merely a judicial finding that the state did not prove its case beyond a reasonable doubt. *Ellis v. State*, 64 Ohio St.3d 391, 393, 596 N.E.2d 428 (1992), citing *Walden v. State*, 47 Ohio St.3d 47, 547 N.E.2d 962 (1989). The wrongful imprisonment statutes were intended to compensate the innocent for wrongful imprisonment. They are not intended to compensate those who have merely avoided criminal liability. *Walden* at 52; *Gover v. State*, 67 Ohio St.3d 93, 95, 616 N.E.2d 207 (1993). The petitioner carries the burden of proof in affirmatively establishing his or her innocence, by a preponderance of the evidence, under R.C. 2743.48(A)(5).

{¶12} The State argues that by entering a guilty plea in his first prosecution, Dunbar forfeited any ability to petition for wrongful imprisonment status. In support of its argument, the State emphasizes the fact that R.C. 2743.48(A)(2) requires that the petitioner be "found guilty of, but did not plead guilty to, the particular charge." Dunbar, on the other hand, argues that

because his guilty plea was vacated by this court, it cannot bar his right to present a claim for wrongful imprisonment.

{¶13} In *State v. Moore*, 165 Ohio App.3d 538, 2006-Ohio-114, 847 N.E.2d 452 (4th Dist.), the appellate court was confronted with the same issue presented here. Moore pled guilty to murder in 1995. His counsel had failed to inform him that the state's gunshot-residue tests showed that Moore tested negative for gunshot residue and that another person, Lisa Mullett, tested positive for gunshot residue. On advice of counsel and without knowledge of the gunshot-residue tests, Moore pled guilty and was sentenced to 15 years to life in prison. When Moore learned about the tests, he filed a motion for postconviction relief and a motion to withdraw his guilty plea. The trial court granted the motion, finding that he did not receive the effective assistance of counsel and that he did not knowingly, intelligently, and voluntarily enter his plea.

{¶14} Moore's case proceeded to trial in July 2004. Two witnesses testified that the gunshot-residue tests indicated that Mullett, not Moore, had fired the gun. Additionally, two other witnesses testified that they had overheard Mullett admit that she committed the murder. The jury found Moore not guilty.

{¶15} In August 2004, Moore filed a wrongful imprisonment claim under R.C. 2743.48. Based on the transcript and exhibits from Moore's criminal trial, the court issued a judgment entry declaring Moore a "wrongfully imprisoned individual." The state appealed, arguing that the Moore could not be declared a "wrongfully imprisoned individual" because he had previously pled guilty to the charge for which he was imprisoned. In affirming the trial court's judgment, the *Moore* court explained that because his guilty plea was void, it carried no force or effect at law. *Id.*, 165 Ohio App.3d 538, 2006-Ohio-114, 847 N.E.2d 452, ¶ 22, (4th Dist.). The *Moore* court further explained:

R.C. 2743.48 is ambiguous to the extent that it does not explicitly state whether only valid guilty pleas will preclude recovery, or whether guilty pleas that are void will also preclude recovery. R.C. 2743.48's purpose of redressing existing wrongs would not be served by withholding relief from individuals who were wrongfully induced to enter a guilty plea. The narrowest interpretation of R.C. 2743.48, which would preclude recovery even if the guilty plea is nugatory and has no effect at law, would thwart the remedial goals of the statute. On the other hand, interpreting R.C. 2743.48 liberally would result in assuring that a plea that has been determined to have no legal effect does not, in fact, have any legal effect upon either the criminal or civil matters associated with the case. This would further the remedial goals of the statute by addressing the particularly egregious wrong of imprisoning an individual not only wrongfully, but also unconstitutionally. *Id.* at ¶ 23.

{¶16} We agree with this liberal construction of R.C. 2743.48. Because a void guilty plea has no effect at law, it does not exist for purposes of

determining whether a person has the right to seek compensation under R.C. 2743.48.

{¶17} In the instant case, this court vacated Dunbar's guilty plea because the trial court failed to abide by the parties' plea agreement, which it had approved, without advising Dunbar that it might impose a prison sentence in contravention of the plea agreement. This court explained that "[w]here a sentence recommendation is an integral part of a plea agreement, the failure to inform the defendant of potential changes may result in a plea that was not entered into knowingly, voluntarily, or intelligently." *Dunbar I*, 8th Dist. No. 87317, 2007-Ohio-3261, at ¶ 139, quoting *State v. Algood*, 9th Dist. Nos. 90CA004903, 90CA004904, 90CA004905 1991 WL 116269 (June 19, 1991). Thus, when the trial court decided to deviate from the plea agreement, it should have clearly advised Dunbar of its intention, and allowed him to reconsider his plea. *Id.* at ¶ 140. Without knowledge that the court might impose a prison sentence, Dunbar's plea was not entered knowingly, voluntarily, and intelligently, was void, and therefore, does not preclude his wrongful imprisonment claim.

{¶18} The State also argues that Dunbar's contemporaneous criminal conduct prevents him from qualifying as a "wrongfully imprisoned individual" under R.C. 2743.48. In *Gover*, 67 Ohio St.3d 93, 616 N.E.2d 207, the Ohio

Supreme Court explained that R.C. 2743.48 "is intended to filter out those claimants who have had their convictions reversed, but were committing a different offense at the time that they were engaging in the activity for which they were initially charged." *Id.* at 95. For that reason, the "requirement that 'no criminal proceeding * * * can be brought * * * against an individual for any act associated with that conviction' is of critical importance." *Id.*

{¶19} Gover filed a wrongful imprisonment claim after his safecracking conviction was reversed. The safecracking charge was brought against him after a glass window in a restaurant had been broken and Gover, who was observed leaving the scene, possessed objects stolen from the safe when he was arrested a short time later. On appeal, the court reversed his conviction because Gover had not removed the items from a safe. The Ohio Supreme Court remanded the wrongful imprisonment case to the trial court because the record was "devoid of any evidence that the trial court considered whether [Gover] committed other offenses." Because Gover could be subject to further prosecution for other crimes arising from the same incident, the Supreme Court refused to declare him a "wrongfully imprisoned individual."

{¶20} Dunbar committed the domestic violence offense before the actions involving the alleged abduction and had completed his sentence for the domestic violence conviction before the abduction conviction arose. Once someone

completes a prison sentence and has "served his debt to society," he is entitled to freedom. *State v. Bradley*, 8th Dist. No. 79094, 2002-Ohio-3540, ¶ 10. Once Dunbar completed his sentence for domestic violence, any additional prison time he served for a crime he did not commit constituted wrongful imprisonment, because no further criminal prosecution could be brought against him.

{¶21} The State also argues that the court erred by not requiring Dunbar to prove his innocence by a preponderance of the evidence. As previously noted, to qualify as a "wrongfully imprisoned individual" under R.C. 2743.48, the petitioner must not only be acquitted of the crime for which he was imprisoned, but he must also prove his innocence by a preponderance of the evidence. *Walden*, 47 Ohio St.3d at 52, 547 N.E.2d 962.

{¶22} The State suggests that the evidence in the record is insufficient to establish Dunbar's innocence by a preponderance of the evidence. As previously mentioned, a petitioner seeking to establish a claim for wrongful imprisonment must produce more evidence than a judgment of acquittal, which is simply a judicial finding that the State did not prove its case beyond a reasonable doubt. *Ellis*, 64 Ohio St.3d at 393, 596 N.E.2d 428. Hence, the State asserts: "the very same transcript of a criminal proceeding which results in a conviction and which is subsequently overturned on the weight or sufficiency

of the evidence may nonetheless be insufficient to support a claimant's innocence by a preponderance of the evidence." *Moore*, 165 Ohio App.3d at 543, 2006-Ohio-114, 847 N.E.2d 452 (4th Dist.), citing *Chandler v. State*, 95 Ohio App.3d 142, 149, 641 N.E.2d 1382 (8th Dist.1994). However, implicit in that statement is the idea that the record may well be sufficient, depending on the facts of the case.

{¶23} This court recently upheld the trial court's grant of summary judgment in an analogous case. *See Doss v. State*, 8th Dist. No. 96452, 2011-Ohio-6429. In *Doss*, we found the uncontradicted evidence in the record supported Doss's motion under R.C. 2743.48(A). *Id.* at ¶ 17.

{¶24} In the instant case, the trial court relied on the facts set forth in *Dunbar II*, 8th Dist. No. 92262, 2010-Ohio-239, when it found that Dunbar met his burden of proving his innocence. In *Dunbar II*, this court found there was insufficient evidence to support Dunbar's abduction conviction because the victim testified that Dunbar never restrained her but left for long periods of time during which she was free to leave the house. R.C. 2905.02(A)(2), which governs abduction, states that "[n]o person shall * * * [b]y force or threat, restrain the liberty of another person under circumstances that create a risk of physical harm to the victim or place the other person in fear." "Fear" is defined

as "a distressing emotion aroused by impending danger." *Websters Unabridged Dictionary* 1960 (2d Ed.1998).

{¶25} The State suggests that the trial court's reliance on *Dunbar II* was improper and that the record is otherwise devoid of any evidence proving his innocence. However, an appellate court may take judicial notice of a court's finding in another case. *Kirshner v. Shinaberry*, 64 Ohio App.3d 536, 582 N.E.2d 22 (6th Dist.1989). *See also In re Lassiter*, 101 Ohio App.3d 367, 374, 655 N.E.2d 781 (2d Dist.1995). This rule comports with other doctrines in Ohio jurisprudence such as collateral estoppel and law of the case, which are intended to avoid the possibility of inconsistent results and preserve the integrity of the courts. Accordingly, the trial court could rely on the facts established in *Dunbar II* to find that Dunbar proved his innocence by a preponderance of the evidence.

{¶26} Accordingly, we overrule both assignments of error.

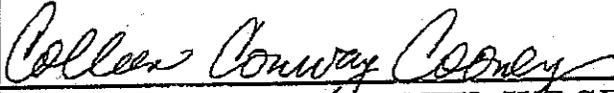
{¶27} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to
Rule 27 of the Rules of Appellate Procedure.


COLLEEN CONWAY COONEY, JUDGE

PATRICIA A. BLACKMON, A.J., and
JAMES J. SWEENEY, J., CONCUR

EXHIBIT B

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

LANG DUNBAR,)	CASE NO. CV 10 734290
)	
Plaintiff,)	
)	JUDGE BRENDAN J. SHEEHAN
v.)	
)	
STATE OF OHIO,)	
)	
Defendant.)	OPINION AND JUDGMENT
)	ENTRY

I. ISSUES AND FACTS PRESENTED.

This matter is before the Court on the parties' Motions for Summary Judgment. The issues have been fully briefed and argued to the Court.

Plaintiff Lang Dunbar brought this action pursuant to R.C. §2743.48 as an allegedly wrongfully imprisoned individual. The underlying facts and procedural history of this case are not in dispute. On November 7, 2004, Dunbar struck his live-in fiancée, Davida Moore (known at the time as Davida Vassar) in the face and head with his fist, twisted her legs and kicked her. Immediately following the incident, Dunbar became remorseful, apologized, saying he had "snapped," and instructed Moore not to leave the house or answer the door.

On November 20, 2004, Moore filed a complaint against Dunbar with the Cleveland Police Department, and Dunbar was subsequently charged with domestic violence. On December 7, 2004, Dunbar entered a plea of no contest in the Cleveland Municipal Court to the domestic violence charge and was sentenced to 180 days in the Cleveland Workhouse.

On January 7, 2005, while Dunbar was serving his sentence for the domestic violence conviction, the Cuyahoga County Grand Jury indicted him on three counts of abduction and one

count of domestic violence related to the days following the domestic incident described above. *State v. Dunbar* (2010), 2010 -Ohio- 239, ¶21.

Ultimately, Dunbar pleaded guilty to one count of abduction and the remaining three counts of the indictment were nolle. In exchange for Dunbar's guilty plea, the state had agreed to recommend that Dunbar receive community control sanctions or probation, rather than a prison sentence.

On July 12, 2005, the trial court sentenced Dunbar to two years in prison, placed him on post release control for three years, which included drug counseling and testing. Dunbar appealed the trial court's decision and by decision dated June 28, 2007, the Eighth District Court of Appeals reversed Dunbar's conviction and remanded the case to the trial court. The appellate court concluded that the trial court had failed to either forewarn Dunbar of the potential for prison at the plea hearing or give him an opportunity to withdraw his plea at the sentencing hearing. *State v. Dunbar* (2007), 2007 -Ohio- 3261.

On remand, the case was tried to a jury which acquitted Dunbar of domestic violence but found him guilty of one count of abduction. The trial court sentenced Dunbar to a five-year prison term and three-years of post release control.

Dunbar appealed his conviction. In its decision dated January 28, 2010, the appellate court found that the evidence presented at trial was insufficient to support a finding that Dunbar restrained Moore of her liberty by force or threat of force, as required to support a conviction for abduction. The court noted that at trial, Moore testified that after the domestic violence incident, Dunbar told her not to leave the house or answer the door "because of the way [her] face looked" and that during the relevant time period, Dunbar never threatened her, was not violent toward her, but instead, repeatedly apologized for the incident. Moore also testified that during the

relevant time period Dunbar left the house several times for extended periods of time. There was no evidence that Dunbar locked Moore in the house each time he left. Thus, the court concluded, Moore had the opportunity to leave or summon help. Based on its findings, the court held: "Consequently, after reviewing the evidence in a light most favorable to the State, specifically the evidence relating to the five days following the incident, which was the subject of the indictment, we find that the evidence fails to support the conviction for abduction." Accordingly, we sustain the second assigned error [that the evidence is insufficient under the federal Constitution to convict the appellant]." *State v. Dunbar* (2010), 2010 -Ohio- 239, ¶30.

The court of appeals reversed the trial court, vacating Dunbar's conviction and sentence. Dunbar was then ordered discharged.

II. LAW AND ANALYSIS

Dunbar now seeks a declaration that he was a wrongfully imprisoned individual" pursuant to R.C. §2743.49 which 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.

R.C. § 2743.48

The State opposes Dunbar's motion on two primary bases: first, that Dunbar's plea precludes this action and, secondly, that he was engaged in other criminal conduct at the relevant time thereby precluding the requested relief.

Concerning the State's first argument, Dunbar's plea was vacated by the appellate court. As one court stated when faced with similar facts: "{¶ 23} R.C. 2743.48 is ambiguous to the extent that it does not explicitly state whether only valid guilty pleas will preclude recovery, or whether guilty pleas that are void will also preclude recovery. R.C. 2743.48's purpose of redressing existing wrongs would not be served by withholding relief from individuals who were wrongfully induced to enter a guilty plea. The narrowest interpretation of R.C. 2743.48, which would preclude recovery even if the guilty plea is nugatory and has no effect at law, would thwart the remedial goals of the statute. On the other hand, interpreting R.C. 2743.48 liberally would result in assuring that a plea that has been determined to have no legal effect does not, in fact, have any legal effect upon either the criminal or civil matters associated with the case. This would further the remedial goals of the statute by addressing the particularly egregious wrong of imprisoning an individual not only wrongfully, but also unconstitutionally.

{¶ 24} Thus, we hold that the trial court did not err in applying a rule of liberal construction to R.C. 2743.48. Because a void guilty plea has no effect at law, it does not exist for

purposes of determining whether a person qualifies to seek compensation pursuant to R.C. 2743.48.”

State v. Moore (2006), 165 Ohio App.3d 538, 544-545, 2006 -Ohio- 114.

Based on the foregoing, the Court finds that Dunbar’s prior plea, that was vacated on appeal, does not bar proceedings under R.C. 2743.48.

As to the State’s second contention, that Dunbar may not be declared a wrongfully imprisoned individual because he was engaged in other unlawful conduct during the time period related to the indictment. In *Gover v. State* (1993), 67 Ohio St.3d 93, syllabus, the Ohio Supreme Court held that R.C. §2743.48 claimants have the burden of proving that they were not engaging in criminal conduct at the time in question: “Claimants seeking compensation for wrongful imprisonment must prove that at the time of the incident for which they were initially charged, they were not engaging in any other criminal conduct arising out of the incident for which they were initially charged.” *Id.*

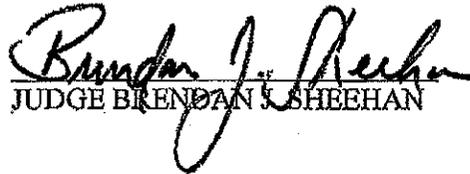
The Ohio Supreme Court had previously held that: “The requirement that “no criminal proceeding * * * can be brought * * * against the individual for any act associated with that conviction” is of critical importance. This statutory language is intended to filter out those claimants who have had their convictions reversed, but were committing a different offense at the time that they were engaging in the activity for which they were initially charged. When the General Assembly enacted Ohio’s wrongful imprisonment legislation, it “intended that the court of common pleas actively separate those who were wrongfully imprisoned from those who have merely avoided criminal liability.”” *Walden v. State* (1989), 47 Ohio St.3d 47, 52.

Dunbar pled no contest to charges of domestic violence in the Cleveland Municipal Court prior to the indictment at issue in this matter. While this fact is troubling to the Court in viewing

the current petition, the appellate court made it clear that the indictment concerned the time period following the domestic violence incident. During the time period of the indictment, the record fails to reflect any criminal activity committed by Dunbar. Accordingly, Dunbar satisfies the requirements of R.C. § 2743.48.

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IS GRANTED.
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS DENIED. PLAINTIFF IS
HEREBY DECLARED TO HAVE BEEN A WRONGFULLY IMPRISONED
INDIVIDUAL.**

IT IS SO ORDERED.


JUDGE BRENDAN J. SHEEHAN

Dated: 8.31.11

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed to the following this 31st day of August, 2011:

Terry H. Gilbert
Friedman & Gilbert
1370 Ontario Street
Cleveland, OH 44113

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Michael A. Dolan
The Justice Center, Courts Tower
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