

ORIGINAL

IN THE SUPREME COURT OF OHIO

LANG DUNBAR)	Case No. 2012-0565
)	
)	On Appeal from the
Plaintiff-Appellee)	Cuyahoga County Court
)	of Appeals, Eighth
-vs-)	Appellate District
)	
STATE OF OHIO)	Court of Appeals
)	Case No. 97364
Defendant-Appellant)	

BRIEF OF PLAINTIFF-APPELLEE LANG DUNBAR

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INTRODUCTION

Appellee has pursued a claim of wrongful imprisonment under O.R.C. 2743.48(A) based upon his 2008 conviction by a jury on one count of abduction, against which he pleaded not guilty. That conviction was subsequently overturned and the sentence and verdict vacated. However, the 2008 conviction was itself a retrial of a conviction in 2006 based upon a plea deal which was overturned by the Eighth District Court of Appeals as constitutionally infirm in that the trial judge violated the agreement without offering Appellee the opportunity to change his plea, rendering the plea not knowingly, intelligently, and voluntarily made. Appellee served two years in prison based on the 2006 conviction before it was overturned and a new trial commenced. After the 2008 conviction he served more than a year before the appellate court again reversed his conviction and vacated it and his sentence in early 2010.

The terms of O.R.C. 2743.48(A), which establishes the means by which a wrongfully imprisoned individual can legally establish that status and sue for compensation in the Court of Claims, are not clear as to the effect of such a tangled set of prior trials as in Appellee's case. The specific language at issue in this case is the requirement in 2743.48(A)(2) that the claimant "did not plead guilty to" the crime for which he or she was convicted. From the beginning, the State has argued that this single phrase means that Appellee's vacated plea in his first trial precludes him from receiving wrongfully imprisoned status under the statute. Although the State has added argument based upon legislative history and analogy to other states' practice, this basic argument for what the State describes less than accurately as a "plain meaning" reading of the statute remains the core of its claim in the instant case.

The State has raised a largely specious “slippery slope” argument based on its deliberate elision of the specific factual context of the instant case, but the facts of this case are impossible to separate from its resolution. O.R.C. 2743.48 is a remedial statute, and must be construed liberally to the extent that there is any ambiguity. The ambiguity in the specific factual context of this case is clear, as is the proper and logical reading of the statute: a voided guilty plea that was replaced by a plea of not guilty cannot remain legally effective in only one precise legal context, while still having no legal force of any kind in every other. Appellee’s plea was found constitutionally infirm, and therefore void, and a new trial, with a new plea, ensued. The State’s interpretation of the statute would violate the intent of the law, as well as create absurd results in other cases, and deny finality to criminal judgments.

STATEMENT OF THE CASE AND FACTS

Appellee Lang Dunbar pled no contest to domestic violence charges in Cleveland Municipal Court in 2004, and received a six-month sentence on that charge. Just as that sentence was almost concluded, Mr. Dunbar was indicted by a Cuyahoga County Grand Jury on charges of abduction and domestic violence related to the same incident for which he was serving time. Mr. Dunbar, with great reluctance, accepted a plea agreement in the Court of Common Pleas which would have allowed him to serve community control sanctions rather than prison. At sentencing, however, the Court handed down a two-year prison sentence without first offering Mr. Dunbar the opportunity to change his plea upon consideration of the punishment.

In *State v. Dunbar*, 2007-Ohio-3261 (8th Dist. Ct. App. 2007) [hereinafter *Dunbar I*], the Eighth District Court of Appeals vacated the plea and the sentence due to the trial court’s failure

to abide by the plea agreement, and remanded the case to a new trial. This second trial resulted in a conviction on one count of abduction, and a sentence of five years' incarceration. The Eighth District Court of Appeals reversed *that* conviction on grounds of insufficient evidence in *State v. Dunbar*, 2010-Ohio-239 (8th Dist. Ct. App. 2010) [hereinafter *Dunbar II*].

Appellee then sought a declaration that he had been a wrongfully imprisoned person pursuant to O.R.C. § 2743.48. Both parties filed cross-motions for summary judgment. However, the trial court rejected the State's position and granted Dunbar's motion for summary judgment declaring him a wrongfully imprisoned individual.

On appeal, the Eighth District held that a void plea could not serve as a bar to relief under § 2743.48 because doing so would violate the remedial nature of the law. *Dunbar v. State*, 2012-Ohio-707 (8th Dist. Ct. App. 2012)(hereinafter *Dunbar III*) That court also found that no crime of abduction was committed, based upon the trial record, which was itself sufficient evidence in the instant case to dispose of the need of further affirmative proof, and that the abduction was a second charge and imprisonment beyond the domestic violence case and sentence. *Id.* at ¶¶ 24-25.

The appellate decision, on February 23, 2012, affirmed the trial court decision declaring Mr. Dunbar a wrongfully imprisoned individual, and rejected the same arguments now advanced by the State. The Eighth District also denied the State's Motion to Certify a Conflict to this Court, another argument advanced by the State in its Memorandum in Support of Jurisdiction.

FACTS

The facts in this case are crucial to its resolution, and the State willfully elides them to press its case. On November 7, 2004 Appellee struck his live-in fiancée, knocked her to the ground, and twisted her legs. *Dunbar I* at ¶ 2. He pleaded no contest to domestic violence charges from this incident in Cleveland Municipal Court on December 7, 2004, receiving the maximum 180-day sentence. *Id.* at ¶ 3. While serving that sentence, on January 7, 2005, Appellee was indicted by the Cleveland Grand Jury on three counts of abduction (referring to the fiancée and the couple's two children, who were home at the time of the incident) and one count of domestic violence. *Id.* at ¶ 6. He ultimately entered a plea of guilty to one count of abduction, on the understanding that doing so would result in a sentence of community control sanctions. *Id.* at ¶¶ 6 & 8. The trial court, however, sentenced Appellee to two years in prison without either warning him that this was possible or allowing him the opportunity to change his plea. *Id.* at ¶ 8. This failure on the part of the trial court was the basis of the appellate reversal of the sentence and vacation of the plea. *Id.* at ¶ 131.

In a subsequent trial, Appellee was convicted of one count of abduction, in a verdict reversed in *Dunbar II*. In that decision, the court ruled that, based on the trial record, the crime of abduction had not been proven, because the supposed victim testified that not only did Appellee **not** forcibly confine her, but he even left her alone for extended periods, during which time she answered the door, spoke to Appellee's father, and told him of her plans to leave Appellee. *Dunbar II* at ¶¶ 25 & 28. The Court stated that "a rational person could conclude that she was free to move about, had numerous opportunities to leave, and could have summoned help during the time period under consideration." *Id.* at ¶ 26. The Court also cited testimony by

the victim in which she described Appellee's behavior as contrite immediately following and ever after the incident, and specifically stating that he told her not to leave the house because of the condition of her face, not because he would forbid it with force or violence. *Id.* at ¶ 22.

Mr. Dunbar spent an additional two years in prison for the abduction conviction before he was discharged for insufficient evidence. The maximum six months he served for the domestic violence conviction concluded before the prosecution for the felony abduction indictment.

ARGUMENT

Proposition of Law No. I:

A void and vacated guilty plea has no effect at law, and therefore does not exist for purposes of determining whether a person has the right to seek compensation under O.R.C. § 2743.48 when the individual otherwise satisfies the requirements of the statute

The Appellant argues that Appellee cannot be eligible for wrongful imprisonment status based on a strained, misleading reading of the plain text of the statute, and some decorative frills in the form of legislative histories and policy debates which add little of substance to its argument. Appellant argues that the statute bars wrongful imprisonment status whenever the plaintiff pleaded guilty to the offense of indictment, even if the plea and conviction were voided and vacated. Such a reading of the statute is improper on its own terms, however, because it rejects the clear intent of the statute and the General Assembly, reads language out of the statute (just as Appellant claims Appellee's reading would), and interferes with the finality of judgment.

A. ***O.R.C. § 2743.48 is Remedial in Intent, and Therefore Ambiguity Must Be Resolved by Liberal Construction of the Statute***

Ohio law provides redress for individuals who have been wrongfully imprisoned, embodied in O.R.C. § 2743.48. This statute requires a two-step process by which, first, an individual must be certified as wrongfully imprisoned by a Court of Common Pleas, at which point he may then file a claim against the State in the Court of Claims for compensation for the wrongful imprisonment. This Court, in *Griffith v. Cleveland*, 2010-Ohio-4905, 128 Ohio St.3d 35 (2010), ruled that Common Pleas courts possess “exclusive, original jurisdiction” over wrongful imprisonment claims. *Griffith*, at ¶ 29. The Court of Common Pleas *must* certify as wrongfully imprisoned an individual who meets the following elements of O.R.C. 2743.48(A):

- (1) The individual was charged with. . . 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.

[emphasis added]

O.R.C. § 1.11 declares that remedial laws must be liberally construed in order to promote justice. That O.R.C. § 2743.48 is remedial in nature is clear from its very purpose: It was written expressly to right a wrong, in this case a wrong perpetrated by the State. *Walden v. State*, 47 Ohio St.3d 47, 52 (1989); *Wright v. State*, 69 Ohio App. 3d 775, 778 (10th Dist. Ct. App. 1990) (noting that remedial laws are enacted to correct past defects or to redress an existing wrong). As noted in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374 (2011) at ¶ 9, a remedial law is one that affects the remedy provided, or substitutes a new or altered remedy for the enforcement of an existing right. The remedy for wrongful imprisonment is compensation, determined by the Court of Claims. O.R.C. 2743.48(D). The means for access to that remedy is O.R.C. 2743.48(A).

Appellant asserts that the plain language of the statute suffices to interpret the law, yet must spend pages and repeated appeals to argue this point in the face of multiple decisions by more than one Court of Appeals that ambiguity in fact exists. The ambiguity is narrow, but real: What effect does a prior, void guilty plea have on a subsequent conviction on a not guilty plea in the context of O.R.C. 2743.48? The most reasonable, simplest, and logical reading is Appellee's, not the State's.

B. The Ambiguity Is Effectively Resolved By Appellee's Reading of the Statute

Appellant argues that Appellee once pled guilty to the charge for which he was convicted, and that this plea suffices for the purpose of the statute. Appellant bases this conclusion on its claim that Appellee's plea was "vacated" (Appellant's Br. 9) and that Appellee argues that a vacated sentence should not count under the statute. Both assumptions are patently – even disingenuously

– wrong, and undermine Appellant’s arguments. Appellee’s claim is based upon the fact that the plea in the original case was void, and that his subsequent plea and trial allow him to meet all the requirements of the statute as written.

The Eighth District Court of Appeals, in *Dunbar I* at P139, quoted *State v. Allgood*, Nos. 90CA004903, -04, 05, and -07, 1991 Ohio App. LEXIS 2972, at *9 (9th Dist. Ct. App. 1991) for the settled proposition that when a sentence recommendation that is integral to a plea agreement is changed or potentially changed without informing the defendant (and providing the opportunity to withdraw or refuse the plea), such a plea is not entered into knowingly, voluntarily, or intelligently. Dunbar’s guilty plea was, therefore, void, because it was not knowing, intelligent, or voluntary. The Eighth District, in *Dunbar III* at PP16-17, also described Dunbar’s guilty plea as void.¹ It based its conclusion that Dunbar was not barred from relief under 2743.48 in part on the rationale of *State v. Moore*, 2006-Ohio-114 (4th Dist. Ct. App. 2006). That case found a need for liberal construction of the statute to permit relief when the initial guilty plea has been determined “to have no legal effect” as in Dunbar’s circumstance.

In *Moore*, the defendant had pleaded guilty to murder in 1995 on the advice of his defense attorney, who – incredibly – withheld exculpatory evidence (gunshot residue tests) from his client. *Id.* at ¶¶ 2-3. When the defendant discovered the existence of the tests, he successfully withdrew his plea and in 2004 was acquitted in a jury trial. *Id.* at ¶ 3. He then filed a motion to be adjudicated a

¹The State inexplicably performs a bait and switch as to void pleas, once admitting that the Eighth District referred to a void plea, but in the next sentence converting that adjective to “vacated” and using vacated for the rest of the brief. Appellant’s Br. 17-19 (“The Eighth District also sought refuge in the idea that Dunbar’s guilty plea is ‘void.’ In doing so the court below cited. . .for the proposition that a vacated plea does not preclude recovery in a wrongful-imprisonment action.”)

wrongfully imprisoned person for the time he had served under the conviction. *Id.* at ¶ 5. In originally vacating his plea, the trial court found that Moore's attorney's ineffective assistance meant that Moore had not entered a knowing, intelligent, and voluntary plea. *Id.* at ¶ 3. The Fourth District Court of Appeals found that the trial court was correct to find Moore a wrongfully imprisoned person, and to do so by liberally construing the statute. *Id.* at ¶¶ 16-17 & 24.

A similar line of cases in the Eighth District has found the reasoning in *Moore* and *Dunbar I-III* cogent enough to apply it in other factual circumstances as well. In *Ballard v. State*, 2012-Ohio-3086 at ¶ 27 (8th Dist. Ct. App. 2012) (quoting *Moore* at ¶ 16) after review of *Moore* and *Dunbar II*, the Court simply agreed that "a void guilty plea does not exist for purposes of determining whether a person has the right to see[k] compensation under R.C. 2743.48." In *Johnson v. State*, 2012-Ohio-3694 at ¶ 22 (citing to *Ballard*, quoting from *Moore*) (8th Dist. Ct. App. 2012) the Court approvingly noted that the purpose of the statute would be poorly served by withholding relief from individuals induced to enter a guilty plea that had "no force or effect at law." *Ballard* and *Johnson* involved individuals who had pleaded guilty to reporting violations under provisions of S.B. 10, the Ohio implementation of the federal Adam Walsh Act. Those provisions were found unconstitutionally retroactive by this Court in *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424 (2010) and *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374 (2011). Both the plaintiffs in *Ballard* and *Johnson* took steps to withdraw their guilty pleas prior to appeal, although only one, *Johnson*, was able to do so². Regardless of that difference, the Eighth District held that each had

²Appellee also attempted to withdraw his guilty plea, but, as in *Ballard's* case, no action was apparently taken by the trial court. See Docket, 10/06/2005, case No. CR-04-460794-A, at <http://cpdocket.cp.cuyahogacounty.us/>.

pleaded to a nonexistent crime (just as Dunbar did, initially) and that these pleas were void *ab initio*. *Ballard*, at ¶¶ 8 & 27; *Johnson* at ¶¶ 5 & 23.

This Court, in *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642 at ¶ 27 (2007) described a void sentence as one imposed by a court which lacks subject-matter jurisdiction or the authority to do so. In *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197 at ¶ 21 (2008), the Court added that “[i]f a judge imposes a sentence. . . unauthorized by law, the sentence is unlawful,” and that such a sentence is “void.” And the United States Supreme Court, in *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367, 1377 (2010) declared flatly that “[a] void judgment is a legal nullity.” Dunbar’s plea in his first trial was void, and was vacated for that reason. Here, Appellant’s analogy to marriage is apt, but to Appellee’s advantage. As the State notes, a marriage has legal effect until annulled. (Appellant’s Br. 9) Here Dunbar’s sentence had effect on him until its “annulment” by a finding that it was void due to constitutional infirmity. Contrary to the State’s implication, his sentence was not merely vacated, it was vacated *because it was void*. And Dunbar was tried again, on the same charge as before, and entered a new plea of not guilty. He was convicted in that trial and sentenced to five years’ imprisonment. *Dunbar III* at ¶ 5. In other words, after his plea was declared a legal nullity, he was tried again, entering a separate plea, and convicted by the judge or jury involved in that trial.

The State has demonstrated ambiguity (despite its claims to the contrary) in the statute by arguing that such circumstances bar recovery, that a void plea retains legal effect in precisely one area, and one statute, when it otherwise is nonexistent. This result would undermine consistency in jurisprudence. By contrast, reading the statute to presume an implicit exception for void pleas has logic on its side: Refusing the exception would change a void plea from a legal nullity to a legal

quantum, affecting the finality of a subsequent sentence and altering a fundamental concept of law. Even were the sentence merely vacated, under the circumstances of this case the same effect would be logical – a subsequent trial should eliminate any possible effect of the vacated plea in the interests of finality. This solution is illustrated by simply considering the standard form of jury instructions, in which a defendant is to be considered innocent until proven guilty of every element of every charge. If Appellant’s reading prevails, this presumption of innocence in Dunbar’s case, and that of any other defendant subject to retrial on criminal charges, would be imperiled if not outright cancelled. That result is contrary to every tradition of criminal jurisprudence in this country, predating even the federal Constitution. Put simply, the least disruptive way to read the statute is to do so following O.R.C. 1.11’s liberal construction mandate: The statute does not bother to specify that only valid guilty pleas matter because only valid guilty pleas could possibly be relevant to the analysis of a wrongful imprisonment. Applied to the facts of this case, the limited nature of this construction is easily apparent.

Appellee entered a guilty plea that was void – and voided – then was convicted by a subsequent trial, with a jury, on a not guilty plea. This jury conviction was later reversed on grounds of insufficient evidence, and based upon that reversal, Appellee satisfies the requirements of O.R.C. 2743.48(A). He served a total of approximately four years in prison on the two convictions, even though the crime itself did not occur. If this imprisonment was not wrongful, what is? More to the point, why does a void plea exert legal effect in this one instance, while miraculously not disturbing the finality of the subsequent sentence? The State’s “plain reading” of the statute is willfully obtuse, arguing that the statute can only mean the words as written, and that any other reading, no matter how reasonable, must be ignored, which would actually increase ambiguity.

Appellee's plea was void. To the extent that this void plea prior to a trial and conviction causes ambiguity in the statute, the simplest way to resolve the ambiguity while respecting the intent of the statute is to hold that a void guilty plea cannot bar recovery for wrongful imprisonment where the claimant was subsequently retried and convicted for the crime on a not guilty plea; agreeing with the State requires this Court to undermine the finality of that second judgment by giving effect to an otherwise null judgment.

C. Appellant's Reading of the Statute Ignores Other Statutory Components As It Accuses Appellee of Doing

Appellant argues that Dunbar's reading of the statute "reads out" language around the "did not plead guilty to" requirement, while eliminating that requirement's relevance. In fact the State is guilty of this flaw, not Appellee. Two examples will suffice. One of the other requirements of O.R.C. 2743.48(A) is that of (A)(4), which reads in relevant part "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." The other relevant section is (A)(2), directly adjacent to the "did not plead guilty to" language: "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.**" (Emphasis added). Each of these components of O.R.C. 2743.48(A) are elided or eliminated by the State's reading of the statute, as described below.

I. The "Cannot or Will Not" Component Did Its Work in This Case

The State argues, correctly for once, that the requirements of O.R.C. 2743.48 act as independent filters to claimants for wrongful imprisonment status. Appellant's Br. 10. The State

obsessively focuses on the “did not plead guilty” language as a filter, but ignores the fact that in this case, the statute worked as it was supposed to do to keep out unworthy claimants.

If Appellee had sued under O.R.C. 2743.48 upon the conclusion of *Dunbar I*, this case would be very different. He did not, however, because he *could not*. Instead he was tried again. When that conviction was overturned on the basis of the crime itself having never been committed, it became impossible for a prosecutor to try him for the same crime; he met O.R.C. 2743.48(A)(4)’s requirement in that regard. It took two trials and four years of imprisonment before Appellee’s innocence of the charged crime was established and he was freed. As it was supposed to do, O.R.C. 2743.48(A)(4) acted to filter out a premature claim of wrongful imprisonment.

ii. The Requirement that Appellee Be Convicted “By the Court or Jury Involved” Acted as A Filter To Eligibility

This language is arguably ambiguous, as it does not clearly describe what is meant by “the court or jury involved” – with the wrongful conviction? With all convictions? Leaving aside that potential for ambiguity, though, the Appellant’s preferred mode of “plain meaning” causes a strange result that supports Appellee’s reading of the statute. If a claimant must have been convicted “by the court or jury involved” then, presumably, that means the claimant must not have been acquitted by a jury but convicted on appeal, or convicted by a jury that was trying another case. This result is absurd and legally impossible, but if the statute is read to require that the conviction that serves as the basis of the claim for wrongful imprisonment be decided in a discrete tribunal, it makes sense as a filtering device. In other words, a claimant cannot claim wrongful imprisonment under 2743.48(A) for multiple convictions unless each is raised as a separate claim, or all were tried before the same jury. This filter acts to ensure that a claimant does not receive wrongful imprisonment

status without a careful review of the record of each conviction and each charge. Unfortunately for the State, however, such a reading undermines its attempts to give effect to a void plea, because in the instant case that plea was made before one judge, and a subsequent conviction determined by a later jury. Thus even if the void plea had some lingering legal effect, the trial before a jury at which Appellee pleaded not guilty but was convicted would be eligible for consideration on its own because the judge and jury involved were distinct from the judge in the first case. Appellee need only argue for wrongful imprisonment due to his conviction in 2008, because his prior conviction, based on a void plea, was invalid. The entirety of his four years in prison on the abduction charge was based upon the five year sentence in his second trial (which necessarily included the time served), because the first sentence was based upon a void plea. Thus one more reason to read the statute to exclude void pleas from its ambit arises, and gives meaning to the entirety of the statute to boot.

iii. Reading the Statute to Effect All Language Prevents the State's Slippery Slope Argument From Gathering Force

Appellant argues that under “Dunbar’s logic” those claimants who were convicted but whose pleas were vacated will all be eligible for relief. Appellant’s Br. 10. This claim is patently untrue even on its own terms. O.R.C. 2743.48(A) has five components which must be met to be wrongfully imprisoned under the law, some of which have subdivisions or alternatives. Each of these provides a check to unauthorized claims by filtering certain claimants out – those claimants, for instance, who have had their sentences vacated but who can still be tried. Those who reversed their initial sentence but were then convicted of a lesser-included offense which has not been reversed. Those who were convicted by a jury, reversed the sentence, and cannot be prosecuted, but were only charged with a misdemeanor. The list could go on further, but the point is clear enough: O.R.C. 2743.48(A)

functions to exclude many more claimants than it includes, and in the instant case has worked exactly as it is supposed to do. Appellant, meanwhile, wishes to ignore all of those elements of the statute in favor of a peculiar insistence that only one requirement carries any legal effect, while claiming that Appellee's reading is the one that ignores the statute's whole.

D. Appellant's Legislative History And Related Arguments Fail on Their Own Terms

Appellant introduces arguments based on legislative history, legislative intent, and statutory context while claiming that such arguments are unnecessary because the statute is entirely unambiguous. Ironically, in a case cited to justify these arguments, *Meeks v. Papadopoulos*, 62 Ohio St.2d 187, 190 (1980), this Court allows that the very statutory dispute in that case is enough to establish ambiguity. It goes on, moreover, to delineate acceptable sources to consider in order to guide a court's interpretation of an ambiguous statute. *Id.* at 190-91. These sources of guidance include the intent or purpose of the statute, and the consequences of a particular construction, both of which have already been thoroughly described as favoring Appellee in the instant matter. Additionally, though, this Court allowed that "[t]he circumstances under which the statute was enacted. . . [t]he legislative history. . . [and t]he common law or former statutory provisions, including laws upon the same or similar subjects" were relevant to interpreting an ambiguous statute. Appellant has attempted to frame an argument using these particular sources in order to show that the intent of the statute is best effected by refusing Appellee's reading of the law. The argument fails on its own terms, however.

In attempting to provide damning legislative history, Appellant merely makes Appellee's case easier. Appellant offers a Fiscal Note from the Legislative Budget Office which addressed the

proposed addition to the statute of the “did not plead guilty to” language. In that document, the amendment is characterized as “preventing people who originally pleaded guilty to a felony from bringing civil action against the state. . . for wrongful imprisonment.” Appellant’s App’x F. From this one adverb, Appellant spins a tale of legislative history dedicated to excluding a claimant who ever pleaded guilty from claiming wrongful imprisonment. The disproportionate weight which Appellant accords the word “originally” is cancelled by the fact that Appellant’s other appendices, the Legislative Service Commission Analyses of the Senate and House versions (Appellant’s App’x G and H, respectively), do not include the “original” language but only refer to the statute in its current, ambiguous form. App’x. G at App’x. H at 3. As is typical of lawmaking, the “originally” language at one time was considered or even proposed, but subsequently dropped from the language of the statute as actually passed. Obviously, such a sequence of events fatally contradicts Appellant’s implicit effort to grant the Fiscal Note greater authority than the statute as enacted.

Appellant also attempts to argue that other statutes provide context that strengthens Appellant’s position, referring to *State v. Economo*, 76 Ohio St.35 56, 58 (1996) for that proposition. There, this Court interpreted a statutory provision regarding corroboration of evidence by “look[ing] to this court’s interpretation of code sections (now amended or repealed) necessitating corroboration and the decisions of other states that have examined similar corroboration requirements.” Appellant attempts to offer guidance in interpreting O.R.C. 2743.48(A) by referring to O.R.C. §§ 2961.02(B&C), 2961.01(A)(1), and 2717.01(C)(2). All of these statutes refer to the restoration of rights removed by felony conviction: Public office-holding, voting, and legally changing one’s name after identity fraud. In each case, Appellant notes, such a restoration can only be made by the reversal of the offending conviction. Appellant claims that these are the exceptions that the General

Assembly could have added to 2743.48(A) if it had wanted to do so. Yet these statutes restore stripped rights to felons, they do not relate to compensation for wrongful imprisonment, and they must be explicit about the reversal of the conviction because the conviction itself is the predicate event for the removal of the restored rights. O.R.C. 2743.48 does not remove rights, or restore them. It merely establishes a procedural basis by which a claimant may attempt to gain compensation for a wrongful imprisonment, not merely conviction, by the state. Appellant's proffered statutes actually serve to increase the penalties for pleading guilty to the enumerated offenses, unless particular criteria are met. These statutes do not serve the same goal or purpose as the statute in the instant case, and are simply not relevant as guidance for interpreting the wrongful imprisonment statute.³

Finally, Appellant raises "common-sense notions" which have no place as legal rationales. Appellant's Br. 15-16. Here Appellant states that a) "most criminal defendants do not plead guilty to crimes they did not commit" and b) "many individuals who plead guilty in some sense acquiesce to imprisonment." These two conclusions are unmatched with data or any indication of their veracity, and amount to self-serving circularities. Without devoting more time than they deserve, Appellee simply observes that a great many criminal defendants who are innocent of the charged conduct are helpless and scared enough that a certain punishment seems better than a vaguely possible acquittal. The anecdotal evidence and what data is available suggest that in fact innocent people are quite

³Appellee notes here that Appellant attempts to introduce other states' and jurisdictions' statutory solutions to wrongful imprisonment. Since it requires no authority to assert that the statute in the instant case *could* be more clearly written, Appellee sees no reason to address those statutes further; they are relevant to the General Assembly when or if it chooses to address the ambiguity in O.R.C. 2743.48, but not here. Appellee also notes that the fact that 3 out of 24 statutes (out of a total of 52 jurisdictions, 28 of which have no statute at all) explicitly address exceptions for vacated guilty pleas hardly "reinforces that the General Assembly intentionally chose not to create an exception" as argued by the Appellant. Appellant's Br. 13. If anything, they demonstrate the opposite.

likely to plead guilty to reduced charges, to confess to murder or other crimes, and generally to act contrary to their presumed interests.⁴ Neither of Appellant's assumptions is "common-sense" or relevant – even if one falsely confesses and thereby "acquiesces" to the penalty (and there can be no more cynical assumption by a prosecutor) such a plea is exactly why there are motions to withdraw a plea, and why the criminal appeal of right is enshrined as such in our criminal justice system. "Acquiescence" is a red herring that does not bear on the issue in this case.

Finally, Appellant seems frightened that a torrent of "circumstance-specific inquiries" will arise from Appellee's argument about the meaning of O.R.C. 2743.48(A). Appellant's Br. 16. Appellee does not seek a "perfect outcome" to his case, merely a logical and fair-minded reading of a statute meant to fairly redress a wrong objectively done him. *Id.* Given that Appellant notes that 94% of criminal convictions result from plea bargains, Appellee fails to see why such a tidal wave of claims should arise from a reading of the statute as Appellee requests it. Appellee has argued that a voided or invalid guilty plea cannot logically or fairly have legal effect when, as here, Appellee otherwise satisfies the statute's requirements. Most convictions based on a guilty plea will not be overturned because no trial record will exist to provide error. Of those which are successfully challenged, almost all will result in retrial, as in Appellee's case. Of those, a minute fraction will result in Appellee's circumstance, where conviction ultimately leads to reversal, and freedom. Appellant's slippery slope is an uncommonly silly example of the genre, and should not give this Court pause in its consideration of the actual, legal, merits of this case. The Eighth and Fourth

⁴See Lucian Dervan & Vanessa Edkins, *The Innocent Defendant's Dilemma: An Innovative Empirical Study of Plea Bargaining's Innocence Problem*, SOC. SCI. RES. NETWORK, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2071397 (finding that up to 60% of innocent defendants may accept guilty pleas for certain sentences); for anecdote and links to statistics, see David K. Shipler, *Why Do Innocent People Confess?*, N.Y. TIMES, Feb. 26, 2012, at SR6.

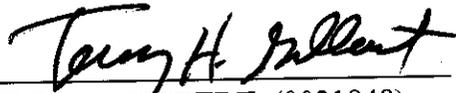
District's resolution of the central issue of this case provide clear guidance to trial courts wrestling with claims under O.R.C. 2743.48(A), and do not increase or alter the need for fact-finding in such claims by reverting to *ad hoc* moral claims bills and other fantastic ills imagined by the State.

CONCLUSION

O.R.C. 2743.48 is a remedial law which must be liberally construed in cases of ambiguity. Such a liberal construction requires a finding that a void guilty plea cannot bar recovery under the statute when the claimant can otherwise satisfy the qualification requirements for a wrongfully imprisoned individual. Such circumstances qualify for relief under the statute, notwithstanding the Appellant's efforts to create a one-time exception to the general rule that a void or invalid plea has no continuing legal force. Because Appellee's reading of the statute is not only the one which effects the purpose of the statute by ensuring proper compensation of wrongfully imprisoned individuals but does no violence to the statute itself or the criminal justice system at large, it is the correct reading for this Court to adopt.

Respectfully submitted,

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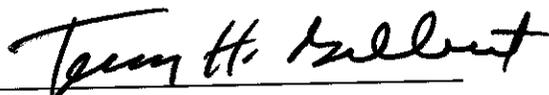
I certify that a copy of this Brief of Plaintiff-Appellee was sent by regular U.S. Mail, postage prepaid, this 25th day of September, 2012, to the following:

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