ORIGINAL

In the
Supreme Court of Ohio

YANKO MANSARAY	:	Case No. 12-1727
Plaintiff-Appellee,	:	On Appeal from the Cuyahoga County Court of Appeals, Eighth Appellate District
v.	:	
STATE OF OHIO,	:	
Defendant-Appellant.	:	Court of Appeals Case No. 98171

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

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INTRODUCTION

This case presents the exact question asked by Justice Pfeiffer at last month's oral argument in *Doss v. State*, No. 2012-0162. When the State declines to retry a criminal defendant because of an unfavorable appellate decision finding key evidence was wrongfully obtained and should have been suppressed at trial: "Is that a case in which the State should be made to pay, or is that a case in which the Defendant should have to proceed in a civil manner to establish innocence."[1] The Eighth District has held wrongful imprisonment compensation should be awarded to criminal defendants who successfully argue, on appeal, they were victims of an improper search and seizure. In so holding, the Eighth District has turned R.C. 2743.48(A)(5), the final element of the statute, on its head.

In Plaintiff-Appellee's wrongful-imprisonment proceeding, the Eighth District reversed the trial court's dismissal under Rule 12(B)(6). The Court of Appeals reasoned that liberal interpretation of the wrongful imprisonment statute meant that Plaintiff-Appellee ("Mansaray") satisfied its requirements. If allowed to stand, the stunning appellate decision dramatically expands the class of people eligible to recover compensation as wrongfully imprisoned individuals. The Eighth District's decision means all criminal defendants who are convicted at trial in Cuyahoga County, but later win a suppression issue on appeal rendering retrial impossible, will be entitled to claim wrongful imprisonment compensation. Ohio's wrongful imprisonment statute reflects the General Assembly's intent to carefully define wrongful imprisonment narrowly and to allow recovery only for those who are blameless. This vast

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[1] *State v. Doss*, No. 2012-0162 (Oral Argument held September 26, 2012, at time marker 28:45 - 30:40 and available at http://www.ohiochannel.org/MediaLibrary/Media.aspx?fileId=137110)

expansion of wrongful imprisonment eligibility, premised on the 2003 "error in procedure" amendment to R.C. 2748.43(A)(5),[2] deserves this Court's attention.

This Court already accepted *State v. Dunbar*, No. 2012-0565 (granted July 5, 2012) to address the Eighth District's liberal analysis when construing R.C. 2748.43. Accordingly, the Court should accept jurisdiction so that these important issues can be reviewed on their merits. Alternatively, the Court should accept this matter for review and hold this case pending its decision in *Dunbar*, and then dispose of the case as appropriate in light of that decision.

STATEMENT OF THE CASE AND FACTS

In September 2011, Mansaray filed a complaint against the State of Ohio in the Cuyahoga County Court of Common Pleas seeking to be found a wrongfully imprisoned person under R.C. 2748.43. The critical and relevant facts, as recited in Mansaray's complaint, follow: 1) In December 2006, Mansaray was arrested and jailed while awaiting trial for drug trafficking and related offenses; 2) In October 2007, Mansaray was subsequently convicted by a jury and sentenced to eleven years in prison; 3) In November 2010, the appeals court reversed Mansaray's conviction because the warrantless search of his residence was ruled unlawful; 4) Mansaray was released from custody in November 2010; 5) In June 2011, the State dismissed the charges without prejudice as a consequence of the Eighth District's ruling that all contraband found in his residence was wrongfully obtained and subject to suppression.

In September 2011, Mansaray commenced a civil action seeking to be found a wrongfully imprisoned person. The State timely filed a motion to dismiss pursuant to Ohio R.Civ. P. 12(B)(6) because Mansaray's alleged error in procedure – the denial of his motion to

[2] *See* Sub. S.B. No. 149, 124th General Assembly. In 2003 the Legislature amended the statute to allow compensation where "[s]ubsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual's release."

suppress – did not occur within the requisite timeframe under R.C. 2743.48(A)(5). On March 14, 2012, the trial court granted the State's motion to dismiss reasoning, "a plain reading of the statute precludes [Mansaray] from recovery, and [as he] has set forth no alternate causes of action or prayers for relief, it is apparent that [Mansaray] can prove no set of facts that would entitle him to relief in this matter. Tr. Ct. Op. at p. 5.

On appeal, the Eighth District reversed. The court held that it was bound by its earlier decision in *Dunbar v. State*, No. 97364, 2012-Ohio-707 (8th Dist.). *See* App. Op. ¶ 16. In that case, the Eighth District held that Ohio's wrongful imprisonment statute was "a remedial statute that must be construed liberally." *Id.* citing *Dunbar*, 2010-Ohio-707 ¶16.

The State moved for reconsideration Eighth District's judgment advancing three grounds. First, the premature conclusion of this Eighth District that the first four elements of Ohio's wrongful imprisonment statute were conclusively proven by Mansaray erroneously addressed the merits of Mansaray's claims. Second, the Eighth District's assumption that R.C. 2748.43(A)(1) through (A)(4) were established conflicts with this Court's holdings in *Gover* and *Walden* that the statute was never meant to compensate those who "merely avoided criminal liability." *Gover v. State*, 67 Ohio.St.3d 93, 616 N.E.2d 207 (1993); *Walden v. State*, 47 Ohio St.3d 47, 52, 547 N.E.2d 962, 967 (1989). Finally, the Eighth District's conclusion that "[a] plain reading of the relevant portion of R.C.2743.48(A)(5) requires that (1) after the individual's sentence . . . (2) the individual was released because of an error in procedure" impermissibly rewrites the plain language of the statute. Ap. Op. ¶ 16. On August 29, 2012, the Eighth District denied the State's motion for reconsideration, thereby paving the way for Mansaray to receive compensation for the time he spent in prison while his criminal case was on appeal.

THIS CASE IS OF PUBLIC AND GREAT GENERAL INTEREST

In determining whether this case is of public and great general interest, this Court needs to look no further than Justice Pfeiffer's hypothetical question asked at oral argument in *Doss v. State*, No. 2012-0162 (argued September 26, 2012). See FN 1, supra. Likewise, this Court should also consider its decision to grant discretionary review in *Dunbar v. State*, No. 2012-0565 (granted July 5, 2012). This case relied heavily on *Dunbar's* "liberal construction" analysis which this Court already determined warrants further review. Additionally, the issues presented in this case are purely legal because a motion to dismiss under Rule 12(B)(6) tests the sufficiency of the complaint. Supreme Court Practice Rule 3.6(A)(3) provides that "[t]he Supreme Court may hold its determination of jurisdiction on . . . a discretionary appeal pending the outcome of any other case before the Supreme Court that may involve a dispositive issue." While *Dunbar* concerns another subsection of the statue, R.C. 2743.48(A)(2), the validity of the Eighth District's "liberal construction" analysis is already before this Court. While this matter certainly warrants discretionary review in its own right, this Court may wish to follow the procedure outlined in Supreme Court Practice Rule 3.6(A)(3) and hold this case pending the outcome of *Dunbar v. State*.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Appellant's Proposition of Law No. I:

The Fourth Amendment's exclusionary rule is inapplicable to a subsequent civil proceeding for wrongful imprisonment under R.C. 2743.48

This Court has already recognized that "[g]enerally, the exclusionary rule has not been applied in civil cases[.]" *State, ex rel. Rear Door Bookstore v. Tenth Dist. Ct. of Appeals*, 63 Ohio St.3d 354, 364, 588 N.E.2d 116 (1992). Furthermore, the U.S. Supreme Court has repeatedly declined to extend the exclusionary rule to civil proceedings. See, e.g. *I.N.S. v. Lopez-*

Mendoza (1984), 468 U.S. 1032, 104 S.Ct. 3479, 82 L.Ed.2d 778 (refusing to apply the exclusionary rule to civil deportation hearings).

The exclusionary rule's inapplicability to statutory wrongful imprisonment cases is allied with this Court's mandate that "the General Assembly 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,* 47 Ohio St.3d 47, 547 N.E.2d 962 (1989). Mr. Mansaray cannot escape the inconvenient fact that over 100 times the bulk amount of M.D.M.A. was found by U.S. Marshals in his residence.[3] It is axiomatic that a criminal defendant who wins a suppression motion has just avoided criminal liability. Suppression of the wrongfully obtained evidence in criminal proceedings does not magically make the contraband disappear in the real world. A Fourth Amendment violation found by a reviewing appeals court and resulting in suppression does not confer upon the accused moral absolution of the hard facts that landed him in court. Although the drugs vanished for purposes of Mansaray's criminal trial, they have once again reappeared now that Mansaray seeks compensation in this separate, civil proceeding.

If allowed to stand, the Eighth District's opinion would conflict with *Jones v. State*, Cuyahoga App. 96184, 2011-Ohio-3075, where, ironically, the same judge who authored the appellate decision below wrote:

> [T]he only evidence Jones provided to the trial court in support of his petition was the journal entry stating that he was found not guilty of the charges. Jones's eventual acquittal of the charges does not prove by a preponderance of the evidence that he was innocent of any wrongdoing. It merely demonstrates that he avoided criminal liability.

Id. at ¶ 12. appeal not allowed by *Jones v. State*, 130 Ohio St.3d 1439, (Nov 16, 2011).

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[3] The State maintains a reviewing Court should not take judicial notice of factual information in Mansaray's prior appellate decisions for purposes of addressing the merits in an appeal of a motion to dismiss.

Here, Mansaray put absolutely no evidence before the trial court because the court dismissed the case pursuant to Rule 12(B)(6). The State never answered the complaint. Neither party filed affidavits or asked the trial court to transfer any of the prior criminal transcripts for use in this separate, civil case. Mansaray "merely avoided criminal liability" because the Eighth District reversed and held a substantial quantity of drugs were wrongfully obtained and therefore suppressed for purposes of Manasray's criminal trial.

Appellant's Proposition of Law No. II:

R.C. 2743.48(A)(5) bars an action for wrongful imprisonment when the claimant's alleged "error in procedure" is a trial court's denial of claimant's motion to suppress evidence that is subsequently reversed and the State elects to not retry the Defendant/Claimant.

The decision below cannot be reconciled with the plain language of the statute. In fact, the Eighth District's has interpreted the final element to mean the exact opposite of what it says. Prior to 2003, an individual seeking to qualify as wrongfully imprisoned under R.C. 2743.48(A) had to demonstrate five things. The first four factors are the same both before and after the 2003 amendment. They require the person to prove that he was convicted of a felony under state law, that he did not plead guilty to it, that he served his sentence in a state prison, and that his conviction was somehow eliminated and further charges cannot or will not be filed. *Id.* at (A)(1)–(4). The final factor, which is at issue here, formerly required the individual to show that, sometime during or after his imprisonment, a court of common pleas determined that he either did not commit the offense, including all lesser-included offenses, or no one committed it. *Id.* at (A)(5) (effective 10/6/94).

In 2003, the General Assembly amended R.C. 2743.48, adding the "error in procedure"

prong. *See* Sub. S.B. No. 149, 124th General Assembly. The relevant version[4] of the statute, R.C. 2743.48(A)(5) (effective 2003) reads,

> ***
> (5) Subsequent to his sentencing and during or subsequent to his 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 he was found guilty, including all lesser included offenses, either was not committed by him or was not committed by any person.
>
> (Emphasis added).

By enacting the additional, bolded language above, the legislature added a new category of individuals that may seek damages for wrongful imprisonment under section (A)(5) - those who were released because of a procedural error *occurring after sentencing or imprisonment.* By affording Mansaray relief, the decision below improperly rewrote R.C. 2743.48(A)(5) as follows:

> ***
> (5) Subsequent to his sentencing and during or subsequent to his imprisonment, ***the individual is released because of an error in procedure, or*** it was determined by a court of common pleas that the offense of which he was found guilty, including all lesser included offenses, either was not committed by him or was not committed by any person.
>
> (Emphasis added)

As presently enacted, the modifying phrase "[s]ubsequent to his sentencing and during or subsequent to his imprisonment" immediately precedes "an error in procedure." The trial court below properly found that the text's plain meaning requires any alleged "error in procedure"

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[4] R.C. 2743.48(A)(5)'s latest version (effective 9/10/12) now reads: "Subsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual's release, or it was determined by the court of common pleas in the county where the underlying criminal action was initiated that the charged offense , including all lesser-included offenses, either was not committed by the individual or was not committed by any person."
Amended by 129th General Assembly File No. 127, HB 487, § 101.01.

occur *after* the claimant is sentenced or imprisoned. Tr. Ct. Op. at p. 3, ¶2. This reading of the 2003 amendment to R.C. 2743.48(A)(5) is further supported by the fact that the General Assembly could have inserted the exact same additional words at the beginning of the statute to have the it mean an alleged "procedural error" includes one that might happen at trial, or even before arrest. But, instead, the legislature specifically chose to put the additional language *after* the existing modifying phrase "[s]ubsequent to his sentencing. . ." The legislature also kept the word "imprisonment" rather than "jailing" in this beginning modifying phrase, further supporting the conclusion that pre-trial procedural error or procedural error at trial are not the sort of alleged "procedural errors" that qualify for relief under the wrongful imprisonment statute.

To determine grammatical meaning requires an inquiry into intention, logic, and placement. Pursuant to R.C. 1.42, "words and phrases shall be read in context and construed according to the rules of grammar and common usage, unless they have a particular or technical meaning." *State, ex rel. Data Trace Information Services, LLC v. Cuyahoga Cty. Fiscal Officer,* 131 Ohio St.3d 255, 963 N.E.2d 1288, 2012-Ohio-753, ¶49. Upon applying the rules of grammar to R.C. 2743.48(A)(5), the introductory phrase modifies the noun for the following reasons:

First, the leading phrase is closer to the noun (error in procedure), suggesting that term is what it's modifying. The phrase could have been put at the end of the clause (after "release"), which would have more obviously modified the verb. Thus, we must infer that the intention of the 2003 amendment's drafters that the noun was to be modified.

Second, the conclusion of the Eighth District expressed in ¶14 of its opinion that "[t]he presumption always is, that every word in a statute is designed to have some effect . . ." rings hollow. The Eighth District *interpreted* a statute it professed had a "plain meaning." In doing so,

it rendered the opening modifying phrase utterly superfluous. Now, any "error in procedure" qualifies for wrongful imprisonment compensation in Cuyahoga County. The error can happen at any time and exactly what is an "error in procedure" remains a mystery -- an unworkable situation not envisioned by the legislature.

Third, it does not make logical sense for the verb "resulted. . . in release" to be modified. The Eighth District's opinion states that a most plain reading is "(1) after the individual's sentence and during or after imprisonment, (2) the individual was released because of an error in procedure. That is, the error in procedure, which resulted in the individual's release, ***occurred prior*** to sentencing and imprisonment." Ap. Op. at ¶16. (Emphasis added). However, Court of Appeal's analysis ignores the reality that that's not what the statute says. In fact, "subsequent to" and "prior" mean the exact opposite. The Court of Appeals has effectively stood the statute's final element on its head.

Although numerous courts[5] – including this Court[6] – have struggled with the 2003 amendment's meaning, the legislature left the opening line intact when it changed it yet again just this year. "It is presumed that the General Assembly is fully aware of any prior judicial interpretation of an existing statute when enacting an amendment." *Clark v. Scarpelli*, 91 Ohio St.3d 271 (2001). By not redrafting the opening line of R.C. 2743.48(A)(5), this Court should

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[5] *Nelson v. State*, 2010-Ohio-1777, ¶¶ 12-21 (Ohio Ct.Cl. Case No. 08-09503WI, Apr 19, 2010) overruled on other jurisdictional grounds by entry *Nelson v. State*, (10th Dist. App. No. 10-AP-385) unreported. See also, *McGrath v. State* (10 Dist., Dec. 13, 2011) 2011 WL 6165108, 2011-Ohio-6391, ¶¶ 7, 10. McGrath sought to be declared wrongfully imprisoned, arguing his invalid plea was an "error in procedure." His infirm plea was vacated on appeal and remanded for further proceedings because the trial court failed to hold a hearing and/or find in an entry that McGrath's competency was restored prior to accepting the plea. His wrongful imprisonment claim was rejected by the trial court, affirmed on appeal, and this Court declined review. *McGrath v. State*, 2011 WL 6165108, 2011-Ohio-6391 (Ohio App. 10 Dist. Dec 13, 2011) appeal not allowed by, 131 Ohio St.3d 1541, (May 9, 2012, No. 2012-0313).

[6] *Griffith v. Cleveland*, 128 Ohio St.3d 35, 2010-Ohio-4905, ¶14.

conclude that our legislature sees no ambiguity therein. Accordingly, the Eighth District's "liberal construction" analysis should be retooled to conform to the statute's existing language and plain meaning. As recently stated by this Court, "[t]he preeminent canon of statutory interpretation requires us to 'presume that [the] legislature says in a statute what it means and means in a statute what it says there.'" *Miller v. Miller*, 132 Ohio St.3d 424, 973 N.E.2d 228 (2012). Here, the legislature emphatically said it twice -- once in 2003, and yet again within the last year.

Appellant's Proposition of Law No. III:

Trial courts must not sua sponte take judicial notice of testimony or evidence in an underlying criminal proceeding when hearing a subsequent civil action for wrongful imprisonment under R.C. 2743.48.

Again, Mansaray put absolutely no evidence before the trial court because the court dismissed the case pursuant to Rule 12(B)(6). The State never answered the complaint. Neither party filed affidavits or asked the trial court to transfer any of the prior criminal transcripts for use in this separate, civil case. The trial court *sua sponte* "[took], for purposes of [its] Opinion, Judicial Notice that Sections (A)(1) through (A)(4) are satisfied by [Mansaray]." Tr. Op. at p.3. But the trial court was required to accept that the other elements of the statute were satisfied when conducting its review of the State's motion to dismiss. "Civ.R. 12(B)(6) rulings are after all based upon conclusions of law rather than findings of fact." *Garofalo v. Chicago Title Ins. Co.* 104 Ohio App.3d 95, 104 (8th Dist.,1995) citing *State ex rel. Drake v. Athens Cty. Bd. of Elections*, 39 Ohio St.3d 40, 528 N.E.2d 1253 (1988).

The Court of Appeals' opinion catapulted off the trial court's improper "judicial notice" and prematurely weighed in on the merits of Mansaray's wrongful imprisonment claim. The Court of Appeals stated, "In the instant case, we agree with both parties and the trial court that

the requirements in R.C. 2743.48(A)(1)-(4) are satisfied by Mansaray. Based on the facts stated in Mansaray's complaint, we also find that Mansaray satisfied the requirements of R.C. 2743.48(A)(5)." App. Op. ¶20. However, the record on appeal did not include any *evidence* upon which the Eighth District could make such conclusions. It contained Mansaray's complaint, the State's motion to dismiss, and Mansaray's response. "'Trial courts will not take judicial notice of their own proceedings in other cases, even though between the same parties and even though the same judge presided.'" See, e.g., *Patel v. Gadd*, 9th Dist. No. 21604, 2004-Ohio-436, 2004 WL 199831, at ¶ 7, quoting *State v. Hill*, 9th Dist. No. 92CA005358, 1993 WL 191972, (June 9, 1993) citing *Diversified Mtge. Investors, Inc. v. Bd. of Revision*, 7 Ohio App.3d 157, 159, (1982). A trial court "may only take judicial notice of prior proceedings in the immediate case." *In re LoDico*, 5th Dist. No. 2003–CA–00446, 2005-Ohio-172, 2005 WL 100953, at ¶ 94 . See also, *In re Erin N.*, 1996 WL 168626 (Apr. 12, 1996). (Juvenile court committed reversible error by *sua sponte* taking "judicial notice" of a prior dependency case involving the same parent and child).

Appellate review is necessarily limited to the record on appeal. "[A] reviewing court should be limited to what transpired in the trial court as reflected by the record made of the proceedings." *State v. Ishmail* 54 Ohio St.2d 402, 377 N.E.2d 500 (1978). Matters outside the record cannot be used to demonstrate error, nor can they be considered in defense of the judgment. Accordingly, even though Mansaray's complaint references his prior criminal appeal, *State v. Mansaray*, Cuyahoga App. 93562, 2010-Ohio-5119, the trial court in his civil matter may not take judicial notice of the testimony of evidence in his prior criminal proceedings. This is especially true on an appeal of a motion to dismiss because it short-circuits the State's efforts

to later establish he was "engaging in any other criminal conduct arising out of the incident." *Gover,* 67 Ohio St.3d 93 at Syllabus.

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. *Ramirez v. State*, 6th Dist. No. WD-02-075, 2004-Ohio-480, 2004 WL 226109 (Lanzinger, J.). (Trial court's reliance on fact that claimant could have been charged with other criminal offenses associated with his reversed drug trafficking conviction when rejecting claimant's wrongful imprisonment action against State, did not violate claimant's due process rights). By prematurely granting Mansaray access to the State's checkbook, the Court of Appeals has prevented the State from demonstrating that Mansaray committed other crimes arising out of this incident, i.e. the same crimes mentioned above, in *Ramierez.*

CONCLUSION

For all of the reasons set forth above, this case involves issues of public and great general interest. Ohio's present statutory wrongful imprisonment action "is a waiver of the state's common-law sovereign immunity and has no parallel in the ancient dual system of law and equity." *Walden,* supra. at 53. In waiving that sovereign immunity, the legislature never intended to compensate defendants fortunate enough to have their convictions overturned on Fourth Amendment grounds. R.C. 1.47(C) presumes that the legislature desired "a just and reasonable result." The General Assembly never intended to compensate individuals who committed gruesome crimes, but were nonetheless released solely because of a technical violation of the Ohio Rules of Procedure, or an improper search necessitating in suppression of key evidence. Compensating such individuals would so disturb the legislature and general public

as to undermine the public's confidence in state government. Appellant therefore requests that this Court accept jurisdiction so that these important issues can be reviewed on their merits. Alternatively, the Court should hold this case pending the decision in *Dunbar v. State*, No. 2012-0565 (granted July 15, 2012), and then dispose of this case in light of that decision.

Respectfully submitted,

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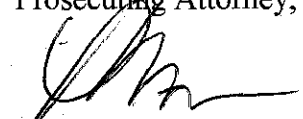

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I certify that a copy of the foregoing Memorandum in Support of Jurisdiction of Defendant-Appellant State of Ohio was served by U.S. mail this 11th day of October, 2012, upon the following counsel:

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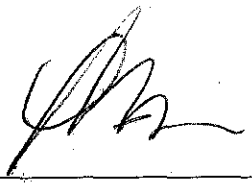

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Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

YANKO MANSARAY

Appellant

COA NO. 98171 | LOWER COURT NO. CP CV-765125

COMMON PLEAS COURT

-vs-

STATE OF OHIO

Appellee

MOTION NO. 457376

Date 08/28/12

Journal Entry

Motion by Appellee for reconsideration is denied.

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CV11765125

75516446

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Presiding Judge JAMES J. SWEENEY, Concurs

Judge LARRY A. JONES, SR., Concurs

Judge MARY EILEEN KILBANE

THE STATE OF OHIO, Cuyahoga County } SS, I, GERALD E. FUERST, CLERK OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY, HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL JE dated 8-29-12 NOW ON FILE IN MY OFFICE.
WITNESS MY HAND AND SEAL OF SAID COURT THIS 11th DAY OF Oct A.D. 2012
GERALD E. FUERST, Clerk
By _____, Deputy

VOL 0759 PG 0092

EXHIBIT A

JUL 26 2012

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

FEE 3 TAXED

JOURNAL ENTRY AND OPINION
No. 98171

YANKO MANSARAY

PLAINTIFF-APPELLANT

vs.

STATE OF OHIO

DEFENDANT-APPELLEE

CV11765125

74869330

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-765125

BEFORE: Kilbane, J., Sweeney, P.J., and Jones, J.

RELEASED AND JOURNALIZED: July 26, 2012

THE STATE OF OHIO } SS, I, GERALD E. FUERST, CLERK OF
Cuyahoga County } THE COURT OF COMMON PLEAS
WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY
TAKEN AND COPIED FROM THE ORIGINAL Courts of Appeals
NOW ON FILE IN MY OFFICE.
WITNESS MY HAND AND SEAL OF SAID COURT THIS 11th
DAY OF Oct A.D. 20 12
GERALD E. FUERST, Clerk
By _____, Deputy

EXHIBIT B

VOL 0757 PG 0330

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MARY EILEEN KILBANE, J.:

{¶1} This is an accelerated appeal brought pursuant to App.R. 11.1 and Loc.App.R. 11.1.

{¶2} Plaintiff-appellant, Yanko Mansaray ("Mansaray"), appeals the trial court's judgment granting the motion to dismiss of defendant-appellee, the state of Ohio ("State"). For the reasons set forth below, we reverse and remand.

{¶3} In January 2007, Mansaray was indicted with drug trafficking, drug possession, possessing criminal tools, and having a weapon while under disability. The drug trafficking and drug possession counts had major drug offender and firearm specifications attached. The charges resulted from the discovery of large quantities of ecstasy pills in Mansaray's home, while U.S. Marshals attempted to execute an arrest warrant for another person allegedly at Mansaray's home.

{¶4} Prior to trial, Mansaray moved to suppress the drugs and guns found in his home. The trial court denied the motion after a hearing, and the matter proceeded to a jury trial. The jury found Mansaray guilty of drug possession and possessing criminal tools, but not guilty of drug trafficking. In a bifurcated hearing, the trial court found Mansaray guilty of having a weapon while under disability. In October 2007, the trial court sentenced Mansaray to a total of 11 years in prison.

{¶5} Mansaray then filed an appeal with this court, arguing that the trial court erred when it denied his motion to suppress. *State v. Mansaray*, 8th Dist. No. 93562, 2010-Ohio-5119. We agreed with Mansaray, finding that the U.S. Marshals violated Mansaray's Fourth Amendment rights when they failed to obtain a search warrant to search his home and had no reasonable belief that the suspect they were looking for lived with Mansaray. *Id.* at ¶ 26. As a result of this court's opinion in *Mansaray*, Mansaray was released from prison and the trial court dismissed the indictment against him.

{¶6} In September 2011, Mansaray brought a wrongful imprisonment action against the State under R.C. 2743.48, alleging that an error in procedure (the trial court's denial of his motion to suppress, which was subsequently found to be improper) resulted in his release. In response, the State moved to dismiss Mansaray's complaint under Civ.R. 12(B)(6). The State argued that Mansaray failed to state a claim because the illegal search occurred in December 2006, which did not occur "'subsequent to his sentencing and during or subsequent to his imprisonment' as laid out in R.C. 2743.48(A)(5)." R.C. 2743.48(A)(5) provides in pertinent part: "a 'wrongfully imprisoned individual' means an individual who satisfies each of the following: * * * [s]ubsequent 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." The trial court agreed with the State and dismissed Mansaray's complaint, finding that under a plain reading of R.C. 2743.48(A)(5), "the error must have taken place after the conviction in order for an individual to take advantage of the statutory allowance."

{¶7} It is from this order that Mansaray now appeals, raising the following single assignment of error for review.

ASSIGNMENT OF ERROR

> The trial court erred by reading [R.C. 2743.48] so as to ignore the required liberal construction of the statute and the legislative intent of the relevant language.

Standard of Review

{¶8} We apply a de novo standard of review to the trial court's granting of a motion to dismiss under Civ.R. 12(B)(6) for failure to state a claim. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5, citing *Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 2002-Ohio-2480, 768 N.E.2d 1136. Under this standard of review, we must independently review the record and afford no deference to the trial court's decision. *Herakovic v. Catholic Diocese of Cleveland*, 8th Dist. No. 85467, 2005-Ohio-5985, ¶ 13.

{¶9} In order for a trial court to dismiss a complaint under Civ.R. 12(B)(6) for failure to state a claim upon which relief may be granted, it must

appear beyond doubt that the plaintiff can prove no set of facts in support of his or her claim that would entitle the plaintiff to relief. *Doe v. Archdiocese of Cincinnati,* 109 Ohio St.3d 491, 2006-Ohio-2625, 849 N.E.2d 268, ¶ 11, citing *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975). In resolving a Civ.R. 12(B)(6) motion, a court's factual review is confined to the four corners of the complaint. *Grady v. Lenders Interactive Servs.*, 8th Dist. No. 83966, 2004-Ohio-4239, ¶ 6. Within those confines, a court accepts as true all material allegations of the complaint and makes all reasonable inferences in favor of the nonmoving party. *Fahnbulleh v. Strahan,* 73 Ohio St.3d 666, 667, 1995-Ohio-295, 653 N.E.2d 1186. "[A]s long as there is a set of facts, consistent with the plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss." *York v. Ohio State Hwy. Patrol,* 60 Ohio St.3d 143, 145, 573 N.E.2d 1063 (1991).

R.C. 2743.48 — Wrongful Imprisonment

{¶10} R.C. 2743.48, the wrongful imprisonment statute, allows an individual who meets the statutory definition of a "wrongfully imprisoned individual" to file a civil action against the state and recover monetary damages, reasonable attorney fees, and other expenses. R.C. 2743.48(A) defines a "wrongfully imprisoned individual" as one who satisfies each of the following five criteria:

(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.

{¶11} R.C. 2743.48(A)(5) was amended effective April 9, 2003, "to allow a person, who could not establish his or her actual innocence, but who could establish that an error in procedure resulted in his or her release to file a complaint against the State of Ohio seeking a declaration that he or she had been wrongfully imprisoned." *Nelson v. State*, 5th Dist. No. 2006 AP 0061,

2007-Ohio-6274, ¶ 30. Before this amendment, only individuals who could establish their actual innocence could file such a complaint.

{¶12} Both parties agree that the issue in this case is the interpretation of the phrase, "[s]ubsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual's release," as stated in R.C. 2743.48(A)(5). Mansaray argues R.C. 2743.48(A)(5) is unambiguous, and as it pertains to his complaint, a plain reading of the statute requires that after sentencing, an error in procedure resulted in the wrongfully imprisoned individual's release. The State, on the other hand, argues that R.C. 2743.48(A)(5) requires that the error in procedure occur after the individual was sentenced or imprisoned. The State further argues that the trial court properly interpreted R.C. 2743.48(A)(5) and dismissed Mansaray's complaint because the trial court's improper denial of Mansaray's motion to suppress occurred prior to his sentencing and imprisonment.

{¶13} When interpreting a statute,

> a court's paramount concern is the legislative intent in enacting the statute. In determining legislative intent, the court first looks to the language in the statute and the purpose to be accomplished. Words used in a statute must be taken in their usual, normal or customary meaning. It is the duty of the court to give effect to the words used and not to insert words not used. Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to apply rules of statutory interpretation.

State ex rel. Richard v. Bd. of Trustees of the Police & Firemen's Disability & Pension Fund, 69 Ohio St.3d 409, 411-412, 1994-Ohio-126, 632 N.E.2d 1292. (Internal citations and quotations omitted.)

{¶14} Furthermore, "[t]he presumption always is, that every word in a statute is designed to have some effect, and hence the rule that, 'in putting a construction upon any statute, every part shall be regarded, and it shall be so expounded, if practicable, as to give some effect to *every part of it*.'" *Turley v. Turley*, 11 Ohio St. 173 (1860), citing *Commonwealth v. Alger*, 61 Mass. 53, 7 Cush. 53 (Mass. 1851). (Emphasis in original.) *See also* R.C. 1.47(B), which provides that: "[i]n enacting a statute, it is presumed that * * * [t]he entire statute is intended to be effective" and R.C. 1.42, which provides that: "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly."

{¶15} We find that the State's interpretation of R.C. 2743.48(A)(5) would render the section absurd. To say that an individual is wrongfully imprisoned only when the error in procedure occurred after the individual was sentenced or imprisoned would be illogical. The State references only one error in procedure that can occur after sentencing and results in release — the discovery

of exculpatory DNA evidence. We decline to find that this is solely what the legislature intended when it amended R.C. 2743.48(A)(5).

{¶16} R.C. 2743.48 is a remedial statute that must be construed liberally. *See Dunbar v. State*, 8th Dist. No. 97364, 2012-Ohio-707, ¶ 16. A plain reading of the relevant portion in R.C. 2743.48(A)(5) requires that: (1) after the individual's sentence and during or after imprisonment, (2) the individual was released because of an error in procedure. That is, the error in procedure, which resulted in the individual's release, occurred prior to sentencing and imprisonment. This reading avoids unreasonable and absurd results. *See State ex rel. Asti v. Ohio Dept. of Youth Servs.*, 107 Ohio St.3d 262, 2005-Ohio-6432, 838 N.E.2d 658, ¶ 28 (where the Ohio Supreme Court stated that: "[w]e must construe the applicable statute and rule to avoid such unreasonable or absurd results.")

{¶17} Based on this reading, we find that the trial court's denial of Mansaray's motion to suppress, which was subsequently found to be improper, constitutes an error in procedure under R.C. 2743.48(A)(5).[1] Here, Mansaray's motion to suppress was denied on October 2, 2007 and the trial court sentenced him on October 10, 2007. This court found that the U.S. Marshal illegally seized evidence from Mansaray and that evidence should have been suppressed.

---

[1]We note that a motion to suppress is a procedural remedy governed by the Ohio Rules of Criminal Procedure. *E.g.*, Crim.R. 12 and 47.

Mansaray at ¶ 26. Subsequently, we reversed the trial court's order denying Mansaray's motion to suppress. Because the improper denial of Mansaray's motion to suppress — the error in procedure — occurred prior to sentencing, Mansaray satisfied the requirements in R.C. 2743.48(A)(5).

{¶18} In an analogous situation, the Tenth District Court of Appeals in *Larkins v. State*, 10th Dist. No. 09AP-140, 2009-Ohio-3242, addressed the issue of when the error in procedure must occur. In *Larkins*, the appellant, Larkins, was convicted of aggravated murder, attempted murder, and aggravated murder. Larkins eventually obtained exculpatory documents and sought a new trial. After a hearing on the motion, the Cuyahoga County Common Pleas Court concluded that the documents should have been turned over to Larkins pursuant to *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). The State appealed, and this court affirmed the trial court's grant of a new trial. *State v. Larkins*, 8th Dist. No. 82325, 2003-Ohio-5928. Larkins then filed a motion to dismiss the charges against him with the trial court. The trial court granted the motion to dismiss, and this court affirmed. *State v. Larkins*, 8th Dist. No. 85877, 2006-Ohio-90.

{¶19} After that, Larkins sought a declaration in the trial court that he was a wrongfully imprisoned individual as defined in R.C. 2743.48. He entered into a joint stipulation with the State that he had been released as the result of an error in procedure. Based on that stipulation, the trial court found that

appellant was a wrongfully imprisoned individual. On appeal, the Tenth District Court of Appeals acknowledged that a *Brady* violation, which occurred before sentencing, constitutes an error in procedure under R.C. 2743.48. *Larkins* at ¶ 10.

{¶20} As stated above, R.C. 2743.48 requires that an individual satisfy the criteria in R.C. 2743.48(A)(1)-(5) to be considered "wrongfully imprisoned." In the instant case, we agree with both parties and the trial court that the requirements in R.C. 2743.48(A)(1)-(4) are satisfied by Mansaray. Based on the facts stated in Mansaray's complaint, we also find that Mansaray satisfied the requirements of R.C. 2743.48(A)(5). Therefore, Mansaray sufficiently pled a wrongful imprisonment claim in order to survive a motion to dismiss for failure to state a claim. As a result, the trial court erred when it granted the State's motion to dismiss.

{¶21} Accordingly, the sole assignment of error is sustained.

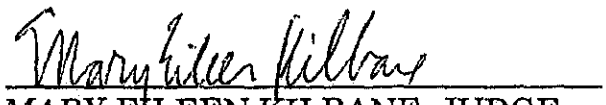
{¶22} Judgment is reversed, and the matter is remanded for proceedings consistent with this opinion.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.



MARY EILEEN KILBANE, JUDGE

JAMES J. SWEENEY, P.J., and
LARRY A. JONES, SR., J., CONCUR

CC 97 / 2783

The State of Ohio, Cuyahoga County. } ss.

I, GERALD E. FUERST, Clerk of the Court of Appeals within and for said County, and in whose custody the files, Journals and records of said Court are required by the laws of the State of Ohio, to be, kept, hereby certify that the foregoing is taken and copied from the Journal entry, volume 757 page 330 dated: 7/26/16 CA 99171 of the proceedings of the Court of Appeals within and for said Cuyahoga County, and that the said foregoing copy has been compared by me with the original entry on said Journal entry, vol. 757 pg. 330 ~~dated:~~ 7/26/16 and that the same is correct transcript thereof.

In Testimony Whereof, I do hereunto subscribe my name officially, and affix the seal of said court, at the Court House in the City of Cleveland, in said County, this 27th day of July A.D. 20 16

GERALD E. FUERST, Clerk of Courts

By _____ Deputy Clerk

72883961

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

YANKO MANSARAY
Plaintiff

STATE OF OHIO
Defendant

Case No: CV-11-765125

Judge: MICHAEL ASTRAB

JOURNAL ENTRY

96 DISP.OTHER - FINAL

DEFENDANT STATE OF OHIO'S MOTION TO DISMISS, FILED 10/28/2011, IS GRANTED. OSJ. FINAL. COURT COST ASSESSED TO THE PLAINTIFF(S).

Judge Signature 3/14/12 Date

RECEIVED FOR FILING
MAR 14 2012
GERALDE FUERST, CLERK
By Deputy

EDP
NI

THE STATE OF OHIO
Cuyahoga County } SS, I, GERALD E. FUERST, CLERK OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY, HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL JE dated 3-14-12 NOW ON FILE IN MY OFFICE.
WITNESS MY HAND AND SEAL OF SAID COURT THIS 11th DAY OF Oct A.D. 20 12
GERALDE FUERST, Clerk
By _____, Deputy

- 96
03/14/2012

EXHIBIT C

IN THE COURT OF COMMON PLEAS
CIVIL DIVISION
CUYAHOGA COUNTY, OHIO

YANKO MANSARAY	][	CASE NO. CV 11-765125
	][	
Plaintiff	][	JUDGE MICHAEL K. ASTRAB
	][	
v.	][	**OPINION OF THE COURT**
	][	
STATE OF OHIO	][	
	][	
Defendant	][	

Michael K. Astrab, Judge:

This matter was filed on September 23, 2011 by Plaintiff Yanko Mansaray seeking a finding from this Court that he was wrongfully imprisoned with regard to Cuyahoga County Court of Common Pleas (Criminal Division) case number CR-491214. The Plaintiff was found Guilty by a jury on drug charges and sentenced to a term of 11 years on October 11, 2007. The 8th District Court of Appeals, in **State v. Mansaray**, 2010-Ohio-5119, reversed that conviction on Fourth Amendment grounds related to an illegal search of the Plaintiff's home by law enforcement agents. The evidence seized as a result of that search was ordered suppressed. On June 7, 2011 all charges against the Plaintiff were dismissed by the State of Ohio, through the Cuyahoga County Prosecutor's Office.

The instant action, as stated above, seeks a finding from this Court that the Defendant was "wrongfully imprisoned" by the State of Ohio, pursuant to the guidelines as set forth in R.C. 2743.48, which states:

> (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. (Emphasis Added).

The Court has placed in bold lettering the first part of the first sentence of 2743.48(A)(5), which is the primary focus of the parties herein. The Court, in reviewing the docket of the trial court, takes, for purposes of this Opinion, Judicial Notice that Sections (A)(1) through (A)(4) are satisfied by the Plaintiff. All five sections, however, must be satisfied in order for a Court to make a proper finding of "wrongful imprisonment."

The Court notes that the Plaintiff's Complaint only alleges the "error in procedure" language from 2748.43 and does not allege that the offense was not committed by the Plaintiff nor by anyone. As such, it is this Court's position that the only cause of action for consideration in this matter is the "error in procedure" discussed in 2743.48.

Both sides have submitted excellent briefs, including references to decisions of other trial courts in similar situations. In reviewing the case law, as well as the language of the statute itself, the Court will steal a line from the movie *Cool Hand Luke*: It is apparent that "what we have here is [a] failure to communicate" as to what exactly is meant by the term "error in procedure." The State of Ohio is demanding a literal reading of the statute that would enable relief only for errors in procedure that take place after sentencing, which would foreclose a look-back to anything that took place during the pre-trial or trial stages of the action. The Plaintiff, obviously, is looking for an interpretation

that goes beyond a strict, literal reading and encompasses issues such as improper rulings on suppression motions by the trial judge, which is the reason that the Plaintiff is walking the streets a free man today. But for the error by the trial judge in denying the motion to suppress, says the Plaintiff, he would never have been tried on the case, never convicted and obviously never sent to prison on those charges.

R.C. 1.42 provides that "words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly."

> In reviewing statutory provisions, courts are constrained to look to the statutory language and the " 'purpose to be accomplished.' " **State ex rel. Richard v. Bd. of Trustees of the Police & Firemen's Disability & Pension Fund** (1994),69 Ohio St.3d 409, 411, quoting **State v. S.R.** (1992), 63 Ohio St.3d 590, 594–595. "Words used in a statute must be taken in their usual, normal or customary meaning * * * [and it] is the duty of the court to give effect to the words used and not to insert words not used." **Id.** at 412. **State v. Cargile** (2009), 123 Ohio St.3d 343, 346.

The Court, taking the approach favored in the Revised Code and backed up by case law, reads the phrase "[s]ubsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual's release" to mean exactly what they say – the error must have taken place after the conviction in order for an individual to take advantage of the statutory allowance. If this is not what the Legislature intended, then a Court higher than this one should produce some black-letter law that gives the common pleas courts of this State guidance in how to handle "error in procedure" actions.

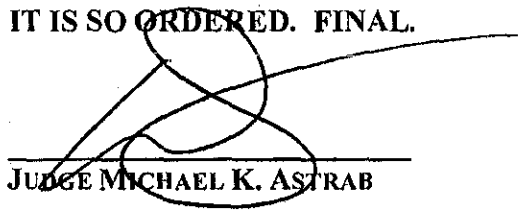
The 8th District, in a recent decision, has upheld the long-standing philosophy of the wrongful imprisonment provisions of Ohio law, stating in a footnote that "We note that the wrongful imprisonment statutes were intended to compensate the innocent for wrongful imprisonment...The statutes were ***never*** intended to compensate those who have merely avoided criminal liability."(Emphasis Added; Citations Omitted) **State v. Jones**, 2011 WL 2519537, FN3, (Ohio App. 8th Dist.). This Court believes that the clear language as set forth by the Legislature is in accordance with the prevalent judicial philosophy regarding wrongful imprisonment cases as stated above.

> A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. **State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.** (1992), 65 Ohio St.3d 545. It is well settled that "when a party files a motion to dismiss for failure to state a claim, all the factual allegations of the complaint must be taken as true and all reasonable inferences must be drawn in favor of the nonmoving party." **Byrd v. Faber** (1991), 57 Ohio St.3d 56, 60, *citing* **Mitchell v. Lawson Milk Co.** (1988), 40 Ohio St.3d 190, 192. However, while the factual allegations of the complaint are taken as true, the same cannot be said about unsupported conclusions. "Unsupported conclusions of a complaint are not considered admitted, * * * and are not sufficient to withstand a motion to dismiss. * * * " (Citations omitted.) **State ex rel. Hickman v. Capots** (1989), 45 Ohio St.3d 324.
> In resolving a Civ.R. 12(B)(6) motion, courts are confined to the averments set forth in the complaint and cannot consider outside evidentiary materials unless the motion is converted, with appropriate notice, into one for summary judgment under Civ.R. 56. **State ex rel. Baran v. Fuerst** (1990), 55 Ohio St.3d 94. In order for a court to grant a motion to dismiss for failure to state a claim, it must appear "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." **O'Brien v. Univ. Community Tenants Union, Inc.** (1975), 42 Ohio St.2d 242, 245. *See*, **Thompson v. Cent. Ohio Cellular** 93 Ohio App.3d 530, 538.

In looking at the Complaint herein, as stated above, the Plaintiff rests his case on the "error in procedure" language contained in 2943.48(A)(5). As the Court has determined that a plain reading of that statute precludes the Plaintiff from recovery, and the Plaintiff has set forth no alternate causes of action or prayers for relief, it is apparent that the Plaintiff can prove no set of facts that would entitle him to relief in this matter.

The *Motion to Dismiss* filed by the State of Ohio in this matter is **WELL-TAKEN** and **GRANTED.** The within action is hereby dismissed without prejudice at Plaintiff's costs.

IT IS SO ORDERED. FINAL.



JUDGE MICHAEL K. ASTRAB

3/14/12

DATE

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GERALD E. FUERST, CLERK
By Deputy

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed to the following this **14TH** day of **March, 2012**:

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Attorney for the Defendant

JUDGE MICHAEL K. ASTRAB

3/14/12
DATE