

ORIGINAL

In the
Supreme Court of Ohio

IRAN DOSS,	:	Case No. 2012-0162
	:	
Plaintiff-Appellee,	:	On Appeal from the
	:	Cuyahoga County
v.	:	Court of Appeals,
	:	Eighth Appellate District
STATE OF OHIO,	:	
	:	Court of Appeals Case
Defendant-Appellant.	:	No. 96452

**MEMORANDUM OF DEFENDANT-APPELLANT STATE OF OHIO
OPPOSING RECONSIDERATION**

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MEMORANDUM OPPOSING RECONSIDERATION

A motion for reconsideration is not an opportunity for “reargument of a case.” Sup. Ct. Prac. R. 11.2(B). Yet Iran Doss seeks exactly that. He presents nothing more than the same preclusion argument he presented previously. The Court unequivocally (and unanimously) rejected that argument, and Doss offers no sound reason for it to reconsider its decision.

The law applicable to Doss’s wrongful-imprisonment claim has long been settled: a plaintiff seeking compensation under the “actual innocence” prong of R.C. 2743.48(A)(5) must “*affirmatively prove* her innocence by a preponderance of the evidence,” and a prior judgment of acquittal “is *not* to be given *preclusive effect*” on the question of innocence. *State v. Walden*, 47 Ohio St. 3d 47, 51 (1989) (emphases added). Doss nonetheless argued that his successful criminal appeal constituted a judicial finding of innocence that under the principle of *res judicata* “has preclusive effect.” Doss Br. at 2-6. This Court considered Doss’s argument and unanimously rejected it, reaffirming the long-established *Walden* rule. Slip Op. ¶¶ 13-17.

Doss identifies no change in the law or in the facts that would justify reconsideration. Instead he argues unpersuasively that this Court overlooked two points.

First, Doss claims that the Court overlooked the significance of the Eighth District’s decision vacating his convictions when it concluded that he failed to provide “affirmative proof of his actual innocence.” Mot. at 1-2 (quoting Slip Op. ¶ 16). The Court overlooked nothing. It simply declined to accept his view that the Eighth District’s decision, by itself, established innocence in this wrongful-imprisonment action: “Even though Doss’s successful appeal may have provided some support for his claim of wrongful imprisonment, it is not enough.” Slip Op. ¶ 17.

Next, Doss asserts that reconsideration is warranted because the principle of *res judicata* was “not even stated or alluded to in the opinion of the court.” Mot. at 2. That assertion likewise gets him nowhere. To be sure, the phrase “*res judicata*” is not in the Court’s opinion. But regardless of the particular phrasing it used, the Court unambiguously rejected Doss’s preclusion argument. Reaffirming *Walden*, the Court explained that “a judgment of acquittal . . . is not to be given preclusive effect” in wrongful imprisonment actions. Slip Op. ¶ 14. Instead, “a claimant advancing a wrongful-imprisonment claim ‘must affirmatively prove her innocence by a preponderance of the evidence.’” *Id.* (quoting *Walden*, 47 Ohio St.n 3d at 52).

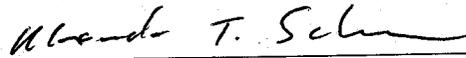
In sum, Doss’s motion presents nothing new or persuasive and should therefore be denied.

CONCLUSION

For these reasons, the Court should deny reconsideration

Respectfully submitted,

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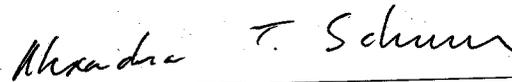
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum of Defendant-Appellant State of Ohio Opposing Reconsideration was served by U.S. mail this 14th day of December, 2012, upon the following counsel:

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