

In the
Supreme Court of Ohio

DANIEL HOLCOMB,

Plaintiff-Appellant,

v.

STATE OF OHIO,

Defendant-Appellee.

: Case No. 2013-0108
:
: On Appeal from the
: Summit County
: Court of Appeals,
: Ninth Appellate District
:
: Court of Appeals
: Case No. 26235
:

MOTION TO HOLD OF DEFENDANT-APPELLEE STATE OF OHIO

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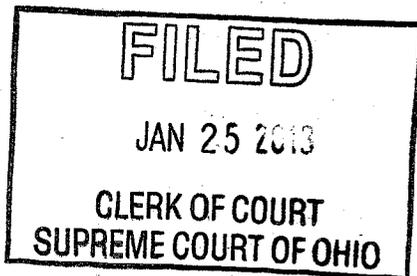
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This case presents the question whether the wrongful-imprisonment statute, which limits recovery to claimants who “did not plead guilty to” their crimes of conviction, bars recovery to claimants whose guilty pleas have been vacated or withdrawn. *See* R.C. 2743.48(A)(2). This Court granted review in *Dunbar v. State*, No. 2012-0565, and will hear oral argument on February 6, 2013, to decide that question. The proper disposition of Holcomb’s claim could be affected by the Court’s resolution of *Dunbar* (as well as by any other defenses that the State has preserved). Accordingly, the Court should hold this case pending its decision in *Dunbar*, and then dispose of the case as appropriate in light of that decision.

Pointing to *Dunbar*, the Court has recently agreed to hold two cases with similar facts to this case: *Ballard v. State*, No. 2012-1525 (granted and held Nov. 28, 2012), and *Johnson v. State*, No. 2012-1731 (granted and held Jan. 23, 2013). In those cases, as in this case, the claimants pleaded guilty to their crimes of conviction. In those cases, as in this case, the guilty pleas were later set aside. And in those cases, as in this case, the claimants argue that guilty pleas that have been set aside do not bar recovery in later wrongful-imprisonment actions. Indeed, the Ninth District listed *Johnson* among the cases that conflict with this case, proving that the fate of this case, like the fate of *Johnson*, is tied to *Dunbar*. The Court should follow the same path it laid in *Johnson* and *Ballard* and hold this case for *Dunbar*.

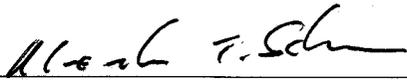
Finally, this case does not independently warrant review. The State did not oppose Holcomb’s motion to certify a conflict below and would not object to a determination by this Court that a conflict exists. But the Court need not set this case for merit briefing and plenary review. Certification was appropriate only because this case raises the same issue as *Dunbar*. It does not raise any other issues worthy of review, nor does it turn on these particular facts. Plenary review here would therefore not be appropriate.

CONCLUSION

For these reasons, 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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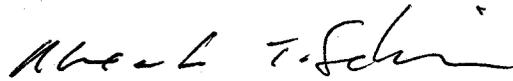
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion to Hold of Defendant-Appellee State of Ohio was served by U.S. mail this 25th day of January, 2013, upon the following counsel:

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