

ORIGINAL

In the
Supreme Court of Ohio

YANKO MANSARAY

Plaintiff-Appellee,

v.

STATE OF OHIO,

Defendant-Appellant.

: Case No. 2012-1727
:
: On Appeal from the
: Cuyahoga County
: Court of Appeals,
: Eighth Appellate District
:
: Court of Appeals
: Case No. 98171
:

MERIT BRIEF OF STATE OF OHIO

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INTRODUCTION

In 2007, a Cuyahoga County jury convicted Plaintiff-Appellee Yanko Mansaray (“Mansaray”) of drug possession with major drug offender and firearm specifications, possession of criminal tools and weapons under disability. Comp. ¶1-2. Mansaray appealed his convictions. In 2010, the Court of Appeals found the trial court erred in denying his pretrial suppression motion. In 2011, this Court denied leave to appeal the Eighth District’s decision by a vote of 5-2. *04/06/2011 Case Announcements*, 2011-Ohio-1618, (O’Connor and Lanzinger, JJ., dissenting). Because of the Eighth District’s decision that an improper search occurred, the State was unable to proceed with prosecuting Mansaray and therefore dismissed the criminal charges. Comp. ¶4. Mansaray avoided serving an eleven year sentence and subsequently filed an action in the Cuyahoga County Court of Common Pleas seeking a declaration that he was a wrongfully imprisoned individual under R.C. 2743.48(A).

STATEMENT OF THE CASE AND FACTS

To obtain compensation for wrongful imprisonment, a claimant must prove that he meets the criteria outlined in R.C. 2743.48(A). At issue here is the “error in procedure” requirement contained in subparagraph (A)(5). The plain language of (A)(5) makes clear that any alleged error in procedure must be after imprisonment in order to receive compensation. Thus, to survive a motion to dismiss, Mansaray’s complaint must allege, among other things, a qualifying error in procedure – i.e. one that happened *after* his imprisonment. Because Mansaray’s complaint failed to allege such an error, or the alternative grounds of actual innocence under (A)(5), the State moved for dismissal under Civil Rule 12(B)(6). After a thorough review, the trial court granted the State’s motion and dismissed Mansaray’s civil action with prejudice. Tr. Op. at p. 5. The trial court reasoned, “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. *Id.*

Mansaray appealed, once again, to the Eighth District. Not only did the Court of Appeals reverse the trial court's dismissal, but it concluded – in the absence of any evidence – that Mansaray was entitled to be paid. The Eighth District reversed and held that it was bound by its earlier decision in *Dunbar v. State*, No. 97364, 2012-Ohio-707 (8th Dist.) which is also presently before this Court.¹ See App. Op. at ¶ 16. Finding once again that Ohio's wrongful imprisonment statute is “a remedial statute that must be construed liberally” the Eighth District found that Mansaray's claimed error qualified. *Id.* at ¶16 *citing Dunbar*, 2012-Ohio-707, ¶16.

The State moved for reconsideration of the Eighth District's judgment advancing three grounds. First, the premature conclusion of the panel 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 v. State*, 67 Ohio.St.3d 93 (1993) and *Walden v. State*, 47 Ohio St.3d 47, 52 (1989). This Court has previously and repeatedly held that the wrongful imprisonment statute was never meant to compensate those who “merely avoided criminal liability.” *Id.* 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 rewrote the plain language of the statute. App. Op. ¶ 16. The Eighth District denied the State's motion for reconsideration. This Court granted discretionary review.

¹ *Dunbar* was recently argued on February 6, 2013. Ohio Sup. Ct. No. 2012-0565.

LAW AND ARGUMENT

The State of Ohio'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.

The Court of Appeals determined that because guns and drugs were seized from Mansaray's residence in violation of the Fourth Amendment, the criminal trial court's failure to exclude that evidence constituted an "error in procedure" that, upon the State's election not to retry the case, entitled Mansaray to be declared wrongfully imprisoned individual pursuant to R.C. 2743.48(A). But if the criminal trial court committed reversible error by failing to exclude such evidence pursuant to the Fourth Amendment's exclusionary rule, that may entitle the defendant to a new criminal trial. However, it does not result in the defendant's release from custody and assuredly does not entitle the defendant to obtain damages from the State of Ohio in a civil action for wrongful imprisonment under R.C. 2743.48. Because the Court of Appeals wrongly determined that the criminal court's error required the civil trial court to declare Mansaray to have been wrongfully imprisoned, the judgment of the Court of Appeals should be reversed.

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, 125 (1992). Furthermore, the U.S. Supreme Court has repeatedly declined to extend the exclusionary rule to civil proceedings seeking deportation. *See, I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 104 S.Ct. 3479, 82 L.Ed.2d 778 (1984).

In a criminal trial, the *State* must establish the defendant's *guilt* by proving each of the essential elements of the crime *beyond a reasonable doubt*. R.C. 2901.05(A). In contrast, R.C. 2743.48 places the burden of proof on the *claimant*. Thus, not only are the burdens of proof

reversed, but the ultimate questions answered in each proceeding also differ greatly. In a criminal trial, the State may not compel the accused to testify. *Walden v. State*, 47 Ohio St.3d 47 at 51. In a wrongful imprisonment action, the State has available to it all manner of tools for obtaining information directly from the claimant. The State may seek written discovery in the form of interrogatories or requests for admission. *See* Civ. R. 33, Civ. R. 35. And the State may compel the claimant to testify at a deposition or at trial. *See* Civ. R. 30. Even if the claimant were able to assert his Fifth Amendment privilege and avoid testifying—perhaps due to the possibility of prosecution in another jurisdiction—the State would be free to request an adverse inference. *See, e.g., State ex rel. Verhovec v. Mascio*, 81 Ohio St. 3d 334, 337 (1998) (quoting *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976)) (“The Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them[.]”) It defies logic to suggest that the State’s inability to proceed with prosecution because of an improper search automatically entitles that defendant to be paid.

The exclusionary rule’s inapplicability to statutory wrongful imprisonment cases is allied with this Court’s longstanding 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). 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, resulting in a sentence of eleven years in prison. A criminal defendant who wins his case on a suppression issue 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. The decision below fails to recognize these distinctions and should be overturned.

The State of Ohio'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.

A. The General Assembly has created a comprehensive framework for providing compensation for wrongful imprisonment.

In 1986, the General Assembly enacted R.C. 2743.48, creating a cause of action against the State for wrongful imprisonment. This statutory scheme "replac[ed] the former practice of compensating wrongfully imprisoned persons by *ad hoc* moral claims legislation." *Walden v. State*, 47 Ohio St. 3d 47, 49 (1989). Each such claim is a two-step process. First, the claimant must obtain a declaration from a common pleas court that he is a wrongfully imprisoned person as that term is defined in R.C. 2743.48(A). Second, upon securing this declaration, the claimant may file a civil action in the Court of Claims to recover damages. *Griffith v. City of Cleveland*, 120 Ohio St. 3d 35, 2010-Ohio-4905 ¶ 30; *see also Walden*, 47 Ohio St. 3d at 49-50. Intended to address "a narrow legal problem by providing compensation to innocent persons who have been wrongfully convicted and incarcerated for a felony, *** [t]he enactment of R.C. 2743.48 was necessary to authorize compensation because the state, even after the waiver of sovereign immunity in R.C. 2743.01, remained generally immune from lawsuits by persons who were wrongfully convicted and incarcerated." *Bennett v. Ohio Dept. of Rehab. and Corr.*, 60 Ohio St.3d 107, 110 (1991).

To that end, R.C. 2743.48(A), as originally enacted in 1986 in Sub. H.B. 609, provided as follows:

(A) As used in this section, a “wrongfully imprisoned individual” means an individual who satisfies each of the following:

(1) He was charged with a violation of a section of the Revised Code by an indictment or information prior to, or on or after, the effective date of this section, and the violation charged was an aggravated felony or felony.

(2) He was found guilty of the particular charge or a lesser-included offense by the court or jury involved, and the offense of which he was found guilty was an aggravated felony or felony.

(3) He was sentenced to an indefinite or definite term of imprisonment in a state penal or reformatory institution for the offense of which he was found guilty.

(4) Subsequent to his sentencing and during or subsequent to his imprisonment, 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.

141 Ohio Laws, Part III, 5351, 5351-52.

Reviewing that law as originally enacted, the Ohio Supreme Court explained that the General Assembly intended to require proof that the claimant was innocent so that the court of common pleas could “actively separate those who were wrongfully imprisoned from those who have merely avoided criminal liability.” *Walden v. State, supra*, 47 Ohio St.3d at 52, Indeed, even “a previous finding of *not guilty* is not sufficient to establish *innocence*. The petitioner seeking to establish a claim for wrongful imprisonment must produce more evidence than a judgment of acquittal, which is merely a judicial finding that the state did not prove its case beyond a reasonable doubt.” *Ellis v. State*, 64 Ohio St.3d 391, 393 (1992); *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 72 (1998) (emphasis sic.). Under *Gover v. State*, 67 Ohio St.3d 93 (1993), a claimant seeking compensation for wrongful imprisonment must prove that at

the time of the incident for which he was initially charged, he was not engaging in any other criminal conduct arising out of that incident. *Id.* at syllabus.

In 1989, R.C. 2743.48(A) was amended by Am. H.B. 623 which, following its adoption provided as follows:

(A) As used in this section, a “wrongfully imprisoned individual” means an individual who satisfies each of the following:

(1) He 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) He 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 he was found guilty was an aggravated felony or felony.

(3) He was sentenced to an indefinite or definite term of imprisonment in a state penal or reformatory institution for the offense of which he 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 his sentencing and during or subsequent to his imprisonment, 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.

142 Ohio Laws 4675, 4675-76 (emphasis added to reflect statutory amendments.).

In 1994, Am. Sub. H.B. 571 amended R.C. 2743.48(A)(3) only to substitute the word “correctional” in place of the former expression, “penal or reformatory.” 145 Ohio Laws, Part IV, 6342, 6389.

As is most pertinent here, Sub. S.B. 149, effective April 9, 2003, amended R.C. 2743.48(A) to provide as follows:

(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.

149 Ohio Laws, Part II, 3545, 3545-46 (emphasis added to reflect statutory amendments.).

Reviewing the Ohio Legislative Service Commission analysis of Sub. S.B. 149, this Court observed that the substantive change to R.C. 2743.48(A)(5):

expands the criteria that an individual must satisfy to be considered a “wrongfully imprisoned individual” to include the condition that subsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual’s release as an alternative to the condition that subsequent to sentencing and during or subsequent to imprisonment it was determined by a court of common pleas that the offense of which the individual was found guilty was not committed by the individual or by any other person.

Griffith v. City of Cleveland, 128 Ohio St.3d 35, 2010-Ohio-4905, ¶ 21.

Most recently, the General Assembly codified this Court's decision in *Griffin* by amending the (A)(5) yet again, but leaving the opening eighteen words entirely intact. R.C. 2743.48(A)(5)'s latest version (effective 9/10/2012) 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 2012 HB 487, § 101.01). (emphasis added to reflect new statutory amendments).

With that historic background as to the law in question, it is appropriate now to explore more fully the issue presented in the proceedings below.

B. The Plain Language of R.C. 2743.48(A)(5) Bars Recovery to Claimants Alleging "Error In Procedure" Occurring Prior to Sentencing Caused their Incarceration.

Mansaray contends that he was a wrongfully imprisoned individual under R.C. 2743.48(A) – without regard to whether he is factually innocent of the crimes – because his release resulted from an "error in procedure," namely, the U.S. Marshal's illegal search and seizure of guns and drugs from his residence.² For the reasons that follow, defendant respectfully submits that plaintiff's reading of and reliance on the "error in procedure" provision contained in R.C. 2743.48(A)(5) is fundamentally flawed and thus cannot provide proper legal grounds for him to be declared a "wrongfully imprisoned individual" under R.C. 2743.48(A).

² 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 in this separate civil action.

To begin, Mansaray does not qualify under the “error in procedure” prong of R.C. 2743.48(A)(5) based on a plain reading of the very text of that law. Reviewing that text again as it is written, it states that “[s]ubsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual’s release ***.” This statutory language plainly contemplates something that has occurred *after* sentencing and *during* or *after* imprisonment. That temporal aspect is consistent with the alternative factual “innocence” prong that, since the very first enactment of R.C. 2743.48 to the present, has always required proof that “[s]ubsequent to sentencing and during or subsequent to imprisonment, *** it was determined by a court of common pleas that the offense of which the individual was found guilty, including all lesser-included offenses, either was not committed by the individual or was not committed by any person.” R.C. 2743.48(A)(5).

1. The statutory context reinforces a plain language application of R.C. 2743.48 (A)(5).

The legislative intent behind that temporal component is readily apparent. A truly innocent person was indeed factually innocent of the crime prior to any conviction, though the facts conclusively proving innocence may not have been available until some time subsequent to conviction, sentencing, and imprisonment, as has been the case when, for example, subsequent DNA testing may conclusively exonerate the convicted individual and perhaps implicates someone else. In that circumstance, it was only after sentencing and during or after imprisonment that a court could determine that the individual was truly innocent and thus wrongfully imprisoned.

Just as R.C. 2743.48(A)(5) contemplates the fact of *innocence* becoming apparent only “subsequent to sentencing and during or subsequent to imprisonment” as a precondition to a wrongful imprisonment declaration, R.C. 2743.48(A)(5) as amended in 2003 comparably

contemplates the fact of some release-inducing *procedural error* occurring “subsequent to sentencing and during or subsequent to imprisonment” as a precondition to a wrongful imprisonment declaration. Had the General Assembly intended for an “error in procedure” occurring *prior* to sentencing and imprisonment to provide grounds to be declared a wrongfully imprisoned individual, there assuredly would have been no reason for R.C. 2743.48(A)(5) to contain the explicit precondition requiring proof that “[s]ubsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual’s release ***.”

This Court has acknowledged as much, expressly observing in *Griffith v. City of Cleveland, supra*, that the 2003 amendment expanded the wrongful imprisonment criteria.

to include **the condition that subsequent to sentencing and during or subsequent to imprisonment**, an error in procedure resulted in the individual’s release **as an alternative to the condition that subsequent to sentencing and during or subsequent to imprisonment** it was determined by a court of common pleas that the offense of which the individual was found guilty was not committed by the individual or by any other person.

Griffith v. City of Cleveland, 128 Ohio St.3d 35, 2010-Ohio-4905, ¶ 21 (emphasis added). Thus under either alternative, the development that ultimately causes the individual’s release from legal custody must be something that occurs “[s]ubsequent to sentencing and during or subsequent to imprisonment.”

In the matter at hand, Mansaray contends the denial of his motion to suppress evidence – or the U.S. Marshals’ improper search – represent “errors in procedure” that entitle him to a wrongful imprisonment declaration under R.C. 2743.48(A). But neither of these events happened “[s]ubsequent to sentencing and during or subsequent to imprisonment ***.” Instead, these events necessarily occurred *prior* to his sentencing and imprisonment. Accordingly, 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 rewrote the intermediate court’s professed “plain reading” of the statute. Ap. Op. ¶16 (Emphasis added.)

On the contrary, if the meaning of the statute is unambiguous and definite, it must be applied as written. *State ex rel. Savarese v. Buckeye Local School Dist. Bd. Of Ed.*, 74 Ohio St. 3d 543, 545 (1996). In considering the statutory language, it is the duty of the court to give effect to the words used in a statute, not to delete words used or to insert words not used. *See Baily v. Republic Engineered Steels, Inc.*, 91 Ohio St. 3d 38, 40 (2001); *Cleveland Elec. Illum. Co. v. Cleveland*, 37 Ohio St. 3d 50 (1988). Pursuant to R.C. 1.42, addressing rules of statutory construction, “words and phrases shall be read in context and construed according to the rules of grammar and common usage.” This Court has continuously held that while the primary goal in statutory interpretation is to give effect to the intent of the legislature, the Court must look first to the plain language of the statute. *Christe v. GMS Mgt. Co., Inc.*, 88 Ohio St. 3d 376, 377 (2000); *Provident Bank v. Wood*, 36 Ohio St. 2d 101, 105 (1973). If the statute conveys a clear, unequivocal, and definite meaning, interpretation comes to an end, and the statute must be applied according to its terms.” *Columbia Gas Transm. Corp v. Levin*, 117 Ohio St.3d 122, 2008-Ohio-511, ¶19.

2. Rules of Grammar Must be Used to Ascertain Meaning.

The State asserted, and the trial court agreed, that a straightforward reading of R.C. 2743.48(A)(5) makes plain that any “error in procedure” that resulted in the individual’s release must occur “[s]ubsequent to sentencing and during or subsequent to imprisonment ***.” In this case, there can be no factual dispute that, whatever Fourth Amendment violation occurred, it did not occur “[s]ubsequent to sentencing and during or subsequent to imprisonment ***.” Thus there can be no factual basis for Mansaray to predicate his claim for wrongful imprisonment on

the “error in procedure” clause set forth in R.C. 2743.48(A)(5). In particular, this qualifying introductory phrase is a prepositional phrase consisting of the prepositions “subsequent to” and “during” and their objects “his sentencing” and “his imprisonment.” As a general matter, a prepositional phrase modifies the language closest to it. *See King v. State Farm Ins. Co.*, 8th Dist. No. 82672, 2003-Ohio-6950, ¶ 42. *See, e.g., In re E.M.D.R.E.*, 12th Dist. Nos. CA2009-08-220, CA2009-08-222, 2010-Ohio-925 at ¶ 47 (“The prepositional phrase, ‘with respect to a motion made pursuant to division (D)(2) of section 2151.413 of the Revised Code’ necessarily limits the remainder of the sentence to those circumstances.”)³

Consequently, the introductory “subsequent to” clause modified that which immediately follows, namely, “it was determined by a court of common pleas ***.” Reconfiguring that clause from its passive voice to the more active, “a court of common pleas determined,” the leading introductory prepositional phrase modified a noun, namely, “a court of common pleas.” The Eighth District’s interpretation that the introductory phrase modifies the verb “determined,” would not appear to be grammatically correct.

Considering this same introductory language now in light of the 2003 amendment, the amendment indisputably retained the introductory prepositional phrase, “[s]ubsequent to his sentencing and during or subsequent to his imprisonment.” Immediately following that phrase, the amendment added the language, “an error in procedure resulted in the individual’s release.” Under the rules of grammar, the prepositional phrase modifies “error,” the noun that immediately follows its modifier. “Modifiers should be placed as close as possible to the words they modify.

³ A jurist who formerly taught college-level composition observed, “[t]he English language has a fairly rigid syntax. As a result, modifiers must be near what they modify. Because of the rigid word order of English, college composition books in this country often designate an entire chapter to the problem of the dangling or misplaced modifier.” *Safeco Ins. Co. v. Motorists Mut. Ins. Co.*, 8th Dist. No. 86124, 2006-Ohio-2063 at ¶ 31 (Karpinski, J., dissenting) (finding that prepositional phrase clearly modified immediately preceding language).

‘If several expressions modify the same word, they should be so arranged that no wrong relation is suggested.’” *Bryan v. Hudson*, 77 Ohio St.3d 376, 380, (1997) quoting Strunk & White, *The Elements of Style* (3 Ed.1979). That the leading phrase modifies the noun “error” is of course consistent and parallel with its prior iteration that modified the noun, “a court of common pleas.”

So to the extent that R.C. 2743.48(A)(5) *prior* to its 2003 amendment logically meant that the common pleas court’s determination of innocence had to occur **after** the person had been imprisoned, it logically follows that R.C. 2743.48(A)(5) *subsequent* to its amendment likewise means that the “error in procedure” resulting in the individual’s release likewise has to occur **after** the person had been imprisoned. There is no plausible reason to read the same modifying words differently.

3. An Alternative Reading Renders the Leading Phrase Superfluous.

Moreover, to the extent Mansaray urges an interpretation of R.C. 2743.48(A)(5) that would permit an “error in procedure” to qualify no matter when it occurs, that interpretation would effectively delete, or at least make utterly superfluous, the introductory phrase, “[s]ubsequent to his sentencing and during or subsequent to his imprisonment,” from the text of R.C. 2743.48(A)(5). By Mansaray’s interpretation, R.C. 2743.48(A)(5) should simply read, “An error in procedure resulted in the individual’s release, or it was determined by a court of common pleas ***.”

But it is a cardinal rule of statutory interpretation that a court may not interpret a statute in a manner that effectively deletes words from the statute. In *State ex rel. Citizens for Open, Responsive, & Accountable Government v. Register*, 116 Ohio St.3d 88, 2007-Ohio-5542, where the court recognized that a township fiscal officer’s duty under R.C. 507.07 to incorporate the annual township financial statement in the township board minutes and to post copies at polling

places arose “only ‘after the township officers have made their annual settlement of accounts,’” this Court refused to read the statute so as “to delete the statutory prerequisite and impose an unconditional duty” on township fiscal officers because that would have required the court to delete words from the statute. *Id.* at ¶¶ 40-42. *See also State ex rel. Asti v. Ohio Dept. of Youth Servs.*, 107 Ohio St.3d 262, 2005-Ohio-6432, ¶ 29 (rejecting appeals court’s interpretation of R.C. 124.11(D) that would in effect delete statutory language that person appointed to unclassified service “shall retain the right to resume the position and status held by the person in the classified service immediately prior to the person’s appointment to the position in the unclassified service”); *State ex rel. Dispatch Printing v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, ¶ 29 (court could not delete statutory prerequisite that document must be a “record” under R.C. 149.011(G) before it can be subject to release as a public record); *State ex rel. Steele v. Morrissey*, 103 Ohio St.3d 355, 2004-Ohio-4960, ¶ 30 (refusing to interpret R.C. 731.32 so as to delete the word “attesting” from definition of “certified copy”); *Erb v. Erb*, 91 Ohio St.3d 503, 506-507, 2001-Ohio-104, (rejecting appellate court’s interpretation of R.C. 742.47 that in effect deleted the term “person” and inserted the phrase, “member of the fund”).

The General Assembly presumably retained the leading prepositional phrase to accomplish some purpose. The rules of statutory interpretation require that the statute be read as it is written. Reading R.C. 2743.48(A)(5) as it is written, the trial court properly dismissed Mansaray’s complaint because no error in procedure occurred “[s]ubsequent to sentencing and during or subsequent to imprisonment.” Mansaray is not eligible to be declared a wrongfully imprisoned individual under that provision.

C. Should this Court find R.C. 2743.48(A)(5), is ambiguous, it may construe the statute in accordance with the tools of statutory construction found in R.C. 1.49.

In the proceedings below, the trial court found R.C. 2743.48(A)(5) is unambiguous.⁴ Curiously, the Eighth District also applied “[a] plain meaning of the relevant portion in R.C. 2743.48(A)(5)” yet reached the opposite result. Ap. Op. at ¶16. Statutory interpretation therefore comes to an end and the statute should be applied using the statute’s plain English. *Columbia Gas Transm. Corp v. Levin*, 117 Ohio St.3d 122 (2008). Because the language employed in R.C. 2743.48 is clear, definite and unambiguous, any inquiry of construction must start and end with the language of the statute. “The 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, 2012-Ohio-2928, ¶48 (Internal quotations omitted). As demonstrated above, when the plain words are examined using traditional rules of grammar, the statute’s final element requires any error in procedure to occur after a claimant is imprisoned.

If, however, this Court rejects the trial court’s literal reading of 2743.48(A)(5), it is subject to varying interpretations, and may be ambiguous. Indeed, this Court has already unanimously ruled R.C. 2743.48(A) is ambiguous regarding whether wrongful imprisonment claims must originate in a Court of Common Pleas, as opposed to the Court of Claims. *Griffith v. Cleveland*, 128 Ohio St.3d 35, 2010-Ohio-4905, ¶14. Likewise, in *Nelson v. State*, 2010-Ohio-1777, the Court of Claims struggled with the same language at issue here reasoning,

R.C. 2743.48 does not define the meaning of “an error in procedure,” nor does the term appear elsewhere in the Revised Code. As to the plain language of the term,

⁴ “The [trial] 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 [the legislature] say[s] – the error must have taken place after the conviction in order for an individual to take advantage of the statutory allowance.” Tr. Op. at p. 4.

“error” is defined as “[a] mistake of law or of fact in a court’s judgment, opinion, or order,” and “procedure” is defined as either “[a] specific method or course of action” or “[t]he judicial rule or manner for carrying on a civil lawsuit or criminal prosecution.” *Black’s Law Dictionary* (7th Ed. 1999) 1221.

However, reference to such definitions does not lend further clarity to the term “an error in procedure” nor does it aid the court in identifying the specific type of errors and procedures which are contemplated under R.C. 2743.48(A)(5). To the extent that the plain language fails to resolve such ambiguity, the court must look to the tools of statutory construction for guidance.

R.C. 1.49 provides:

If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:

- (A) The object sought to be attained;
- (B) The circumstances under which the statute was enacted;
- (C) The legislative history;
- (D) The common law or former statutory provisions, including laws upon the same or similar subjects;
- (D) The consequences of a particular construction;
- (F) The administrative construction of the statute.

Nelson v. State, 2010-Ohio-1777, ¶¶ 12-21, unreported and attached hereto. Overruled on other jurisdictional grounds by entry *Nelson v. State*, (10th Dist. App. No. 10-AP-385) unreported.

1. If the Court Uses the Tools of Statutory Construction, it is Clear the Legislature did not Anticipate the Words “Error in Procedure” be Unlimited in Scope or Time.

Upon construing the statute, it is evident that the State’s advanced meaning is the one that prevails. This Court has found, before and after 2003, “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.” *Doss v. State*, --- N.E.2d ----, Slip Op. No. 2012-Ohio-5678, ¶ 14. “Even though the statute examined in *Walden* was an earlier version of R.C. 2743.48,

the *Walden* holding is still applicable.” *Id.* See also, *Walden v. State*, 47 Ohio St.3d 47, 52 (1989); *Gover v. State*, 67 Ohio.St.3d 93 (1993). Thus, the factors listed in R.C. 1.49(A) and 1.49(D) favor the State’s interpretation. Indeed, R.C. 1.49(D) explicitly permits this Court to reference the pre-2003 version in which the phrase “error in procedure...” is eliminated.

2. The Legislative History Supports the State’s Limited Meaning of the Term.

Next, the legislative history and circumstances surrounding the 2003 amendment support the trial court’s dismissal. R.C. 1.49(B) and (C). This Court may consider relevant legislative history to determine the General Assembly’s intent when a statute is ambiguous. *State v. Jordan*, 89 Ohio St. 3d 488, 492 (2000). Here, the legislative history proves that the General Assembly wanted only to expand the class of wrongful imprisonment claimants to include those who were released because of procedural error occurring after their imprisonment. The original bill, as introduced in the Senate, did not include the procedural-error category for wrongful imprisonment claims. See Sub. S.B. No. 149, 124th General Assembly, as Introduced.⁵ Rather, the provision arose in the House Civil and Commercial Law Committee: “The Committee modified the criteria that an individual must satisfy to be considered a ‘wrongfully imprisoned individual’ to include the condition that subsequent to sentencing and during or subsequent to imprisonment, *an error in procedure resulted in the individual’s release* as an alternative to the condition that” a court of common pleas court determined that the individual was actually innocent of the offense. Synopsis of House Committee Amendments, Sub. S.B. No. 149, 124th General Assembly (emphasis sic). In adding this alternative category for relief, the Committee was expanding the class of potential claimants. *Id.*

⁵ These documents are accessible at http://www.legislature.state.oh.us/analyses.cfm?ID=124_SB_149, last accessed April 1, 2013.

A review of the fiscal analysis of the bill leads to the same conclusion: the General Assembly did not intend to create an unlimited class of new wrongful imprisonment claimants. The fiscal analysis of the bill as passed by the House and as enacted both state that, under the law as it existed before the amendment, "any individual who is determined by a court of common pleas to having been wrongfully imprisoned is entitled to recover damages from the state." Legislative Service Commission Fiscal Note & Local Impact Statement of Sub. S.B. No. 149, 124th General Assembly, As Passed by the House and As Enacted. Neither analysis suggests that the General Assembly intended to alter the established procedures or law, nor do they discuss the cost of such a change.

The Final Bill Analysis provides further support for this conclusion. Under the heading "Content and Operation" and the subheading "Continuing and prior law," the analysis states that:

R.C. 2743.48 provides procedures that must be followed by courts of common pleas, the Court of Claims, and individuals in reference to a wrongful imprisonment claim. When a court of common pleas determines that a person is a "wrongfully imprisoned individual" (see "Definition," below), the court must provide the person with a copy of R.C. 2743.48 and orally inform the person and the person's attorney of the person's rights to commence a civil action against the state in the Court of Claims because of the wrongful imprisonment and to be represented in that action by counsel of choice. (R.C. 2743.48(B).)

Definition

Prior law

A "wrongfully imprisoned individual" was defined in prior law to mean an individual who satisfied each of the following (R.C. 2743.48(A)):

(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, 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.

Operation of the act

The act modifies the definition of “wrongfully imprisoned individual” to mean an individual who satisfies each of the conditions described above in paragraphs (1) through (4) and also the condition that subsequent to sentencing and during or subsequent to imprisonment, *an error in procedure resulted in the individual's release* (added by the act), 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, was not committed by the individual or was not committed by any person (R.C. 2743.48(A)(5)).

Legislative Service Commission Final Bill Analysis of Sub. S.B. 149, 124th General Assembly, at Content and Operation (emphasis sic); Definition heading (emphasis sic, including the addition of procedural error cases under (A)(5)). Notably, this passage describes new statutory language as a *condition*.” The term, “condition” is defined as “[a] future and uncertain event. . .” *Black's Law Dictionary* (9th Ed. 2009). Not only does the plain language of the statute say any claimed procedural error must be after sentencing or imprisonment, the legislative history strongly indicates the same conclusion. This result is not surprising considering that the Final Bill Analysis section claims to describe the “continuing and prior law.”

3. An Alternative Reading Sets Up Conflicts within the Statute.

Accepting Mansaray's contention that an improper search or evidentiary ruling thereon constitute "errors in procedure" that thereby qualify an individual to be a declared a wrongfully imprisoned person is fundamentally inconsistent with the overall structure of the statutory scheme. In particular, ever since the 1989 amendment to R.C. 2743.48(A) effectuated by Am. H.B. 623, a wrongful imprisonment claimant has had to prove, among other things, that the conviction "was vacated or was dismissed, or reversed on appeal ***." See R.C. 2743.48(A)(4). Accepting for purposes of this discussion that an improper search or a trial court allowing in evidence that should have been suppressed constitute "errors in procedure," that may presumably entitle the individual to have the conviction vacated, dismissed, or reversed on appeal, satisfying at least the first element of proof required under R.C. 2743.48(A)(4).

However, it does not necessarily establish that "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 *** against the individual for any act associated with that conviction," as is further required by R.C. 2743.48(A)(4). So the mere fact that a criminal conviction was vacated, dismissed, or reversed on appeal – even with no possibility of further appeals or criminal prosecutions by the prosecuting attorney for any act associated with that conviction – would not entitle the individual to be declared a wrongfully imprisoned individual without additionally proving under R.C. 2743.48(A)(5) factual innocence or, at least since 2003, procedural error resulting in the individual's release.

Yet Mansaray's contention would effectively relieve a wrongful imprisonment claimant from having to establish the critical factual basis required by R.C. 2743.48(A)(5). In establishing

separate and discrete elements necessary to be declared a “wrongfully imprisoned individual,” the Ohio General Assembly plainly sought to require claimants to prove not just that their conviction “was vacated or was dismissed, or reversed on appeal” – whether due to an “error in procedure” or any other reason – but also that “[s]ubsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual’s release or a common pleas court determined either that the offense of which the claimant was found guilty, including all lesser-included offenses, was not committed by the claimant or by anyone else.” R.C. 2743.48(A)(4); R.C. 2743.48(A)(5) (eff. 2003). While the improper search found in Mansaray’s criminal case proceedings may have entitled him to have his conviction vacated, dismissed, or reversed, any such “errors in procedure” could not thereby function to fully exonerate plaintiff from any criminal culpability as R.C. 2743.48(A)(5) plainly intends to do. *See Walden v. State, supra*, 47 Ohio St.3d at 52 (General Assembly intended to require proof of innocence so common pleas court could “actively separate those who were wrongfully imprisoned from those who have merely avoided criminal liability.”)

Indeed, any number of “errors in procedure” can cause a criminal conviction to be vacated, dismissed, or reversed, yet that would not be sufficient to establish wrongful imprisonment eligibility under R.C. 2743.48(A). For example, assume that a trial court denied the defendant’s motion for acquittal pursuant to Crim. R. 29 of the Ohio Rules of Criminal Procedure and the defendant is subsequently convicted. Assume further that on appeal, the court of appeals concludes that the trial court erred in denying the defendant’s Rule 29 motion because there was insufficient evidence presented to sustain the criminal conviction. By Mansaray’s reasoning, that would presumably constitute an “error in procedure” that caused the conviction to be reversed on appeal *and* resulted in the defendant’s release – yet Ohio decisional law is

steadfast in holding that even such a judgment of acquittal does not prove wrongful incarceration. *See Doss v. State, supra.*, Slip Op. No. 2012-Ohio-5678, ¶15 (“If the legislature had intended to compensate all persons whose convictions are reversed based on insufficient evidence, it could have explicitly stated this in R.C. 2743.48”); *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 72 (1998); *Ellis v. State*, 64 Ohio St.3d 391, 393 (1992). Nothing in this case or Ohio law generally suggests that the Ohio General Assembly intended to negate that long-standing body of decisional law and thus functionally relieve wrongful imprisonment claimants from having to sustain their burden under R.C. 2743.48(A)(5) just by adding “error in procedure” as an alternative to factual innocence under that provision. Mansaray’s reading of R.C. 2743.48(A)(4) and (A)(5) effectively eviscerates this Court’s holdings in *Doss*, *Gover* and *Walden* that the statute was never meant to compensate those who “merely avoided criminal liability.” “Not every person who is released from prison because of a successful appeal is entitled to compensation.” *Doss v. State*, 2012 WL 6553273, Slip Op. No. 2012-Ohio-5678, ¶ 22.

In short, Mansaray’s Complaint seeking to be declared a wrongfully imprisoned individual due to pretrial “error in procedure” was fatally flawed under R.C. 2743.48(A)(5) and thus properly dismissed by the trial court. The record here establishes that Mansaray cannot qualify for such a declaration under that provision of R.C. 2743.48(A)(5) as a matter of law.

Although numerous courts⁶ – including this Court⁷ – have, at times, grappled with the wrongful imprisonment statute’s final element, the legislature left its opening clause intact when

⁶ *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

it amended it yet again last 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 re-drafting the opening line of R.C. 2743.48(A)(5), this Court should conclude that our legislature meant what it said. Accordingly, the Eighth District's "liberal construction" analysis should be retooled to conform to the statute's existing language and plain meaning. No construction, liberal or otherwise, can change that "an unambiguous statute means what it says." *Hakim v. Kosydar*, 49 Ohio St. 2d 161, 164 (1977). Here, the legislature emphatically said it twice -- once in 2003, and yet again last year.

The State of Ohio'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.

Mansaray did not put any evidence before the trial court because the court dismissed the case pursuant to the State's motion to dismiss under Civil Rule 12(B)(6). 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 "[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 (1988).

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).

⁷ *Griffith v. Cleveland*, 128 Ohio St.3d 35, 2010-Ohio-4905, ¶14.

The Eighth District's opinion catapulted off the trial court's improper "judicial notice" and appears to have prematurely weighed in on the merits of Mansaray's wrongful imprisonment claim as though it were established by clear and convincing evidence. 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. 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. A Court does not have authority to take judicial notice of the proceedings in another case, including its own judgment entries. *State v. LaFever*, Belmont App. No. 02 BE 71, 2003-Ohio-6545, ¶27. *NorthPoint Properties Inc. v. Petticord*, 179 OhioApp.3d 342, 2008-Ohio-5996, ¶16. The rationale for this holding is that if a trial court takes notice of a prior proceeding, the appellate court cannot review whether the trial court correctly interpreted the prior case because the record of the prior case is not before the appellate court. *State v. Blaine*, Highland App. No. 03CA9, 2004-Ohio-1241, ¶17.

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 *Ramirez*.

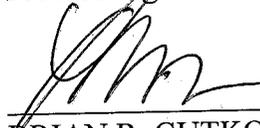
CONCLUSION

Ohio's present statutory wrongful imprisonment system "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. Search and seizure law is complex and ever-changing. Potential pecuniary interests should not be injected into this body of law to further complicate the field. Just because a criminal defendant is successful in convincing an appeals court he was a victim of an improper search does not automatically mean compensation for time served. 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. Before the Eighth District’s unprecedented ruling opens a Pandora’s Box of wrongful imprisonment claimants alleging all sorts of perceived errors, this Court should reverse.

Respectfully submitted,

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Prosecuting Attorney, Cuyahoga County Ohio



BRIAN R. GUTKOSKI* (0076411)
Assistant Prosecuting Attorney
**Counsel of Record*
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Merit Brief of Defendant-Appellant State of Ohio was served by regular U.S. Mail this 1st day of April, 2013, upon the following counsel:

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Counsel for Plaintiff-Appellee
Yanko Mansaray



BRIAN R. GUTKOSKI(0076411)
Assistant Prosecuting Attorney

In the
Supreme Court of Ohio

12-1727

YANKO MANSARAY

Plaintiff-Appellee,

v.

STATE OF OHIO,

Defendant-Appellant.

Case No. _____

On Appeal from the
Cuyahoga County
Court of Appeals,
Eighth Appellate District

Court of Appeals
Case No. 98171

NOTICE OF APPEAL OF DEFENDANT-APPELLANT STATE OF OHIO

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RECEIVED
OCT 12 2012
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
OCT 12 2012
CLERK OF COURT
SUPREME COURT OF OHIO

EXHIBIT A

NOTICE OF APPEAL TO THE SUPREME COURT OF OHIO

Now comes Defendant-Appellant State of Ohio and hereby gives Notice of Appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate Judicial District entered in Case No. 98171 on July 26, 2012, a copy of which is attached hereto.

This case is one of public interest.

Respectfully submitted,

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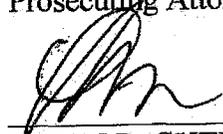
I certify that a copy of the foregoing Notice of Appeal was served by regular U.S. mail this

11th day of October, 2012, upon the following counsel:

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Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 98171

YANKO MANSARAY

PLAINTIFF-APPELLANT

vs.

STATE OF OHIO

DEFENDANT-APPELLEE

**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

CA 98171

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EXHIBIT B

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FILED AND JOURNALIZED
PER APP.R. 22(C)

JUL 26 2012

CLERK OF COURT
COURT OF APPEALS
CLEVELAND, OHIO

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.

¹We 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

MARY EILEEN KILBANE, JUDGE

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



72883961

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

YANKO MANSARAY
Plaintiff

Case No: CV-11-765125

Judge: MICHAEL ASTRAB

STATE OF OHIO
Defendant

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).



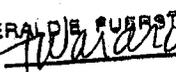
Judge Signature

3/14/12

Date

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MAR 14 2012

GERALD E. FURST, CLERK
By  Deputy



EXHIBIT





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

YANKO MANSARAY

Plaintiff

v.

STATE OF OHIO

Defendant

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CASE NO. CV 11-765125

JUDGE MICHAEL K. ASTRAB

OPINION OF THE COURT

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.

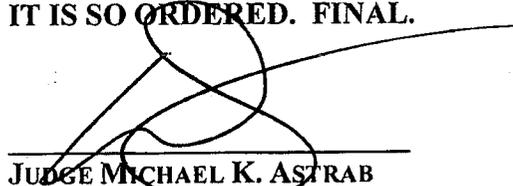
The 8th District, in a recent decision, has upheld the long-standing philosophy of the wrongful imprisonment provisions of Ohio law, stating in a footnote that "We note that the wrongful imprisonment statutes were intended to compensate the innocent for wrongful imprisonment...The statutes were *never* 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

RECEIVED FOR FILING

MAR 14 2012

GERALD E. FUERST, CLERK
By Warwick Deputy

CERTIFICATE OF SERVICE

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

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JUDGE MICHAEL K. ASTRAB

3/14/12

DATE

ACTION AGAINST STATE FOR WRONGFUL IMPRISONMENT

2743.48 Action against state for wrongful imprisonment; notice of rights; amount of damages; eligibility

(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.

(B)(1) When a court of common pleas determines, on or after September 24, 1986, that a person is a wrongfully imprisoned individual, the court shall provide the person with a copy of this section and orally inform the person and the person's attorney of the person's rights under this section to commence a civil action against the state in the court of claims because of the person's wrongful imprisonment and to be represented in that civil action by counsel of the person's own choice.

(2) The court described in division (B)(1) of this section shall notify the clerk of the court of claims, in writing and within seven days after the date of the entry of its determination that the person is a wrongfully imprisoned individual, of the name and proposed mailing address of the person and of the fact that the person has the rights to commence a civil action and to have legal representation as provided in this section. The clerk of the court of claims shall maintain in the clerk's office a list of wrongfully imprisoned individuals for whom notices are received under this section and shall create files in the clerk's office for each such individual.

(C)(1) In a civil action under this section, a wrongfully imprisoned individual has the right to have counsel of the individual's own choice.

(2) If a wrongfully imprisoned individual who is the subject of a court determination as described in division (B)(1) of this section does not commence a civil action under this section within six months after the entry of that determination, the clerk of the court of claims shall send a letter to the wrongfully imprisoned individual, at the address set forth in the notice received from the court of common pleas pursuant to division (B)(2) of this section or to any later address provided by the wrongfully imprisoned individual, that reminds the wrongfully imprisoned individual of the wrongfully imprisoned individual's rights under this section. Until the statute of limitations provided in division (H) of this section expires and unless the wrongfully imprisoned individual commences a civil action under this section, the clerk of the court of claims shall send a similar letter in a similar manner to the wrongfully imprisoned individual at least once each three months after the sending of the first reminder.

(D) Notwithstanding any provisions of this chapter to the contrary, a wrongfully imprisoned individual has and may file a civil action against the state, in the court of claims, to recover a sum of money as described in this section, because of the individual's wrongful imprisonment. The court of claims shall have exclusive, original jurisdiction over such a civil action. The civil action shall proceed, be heard, and be determined as provided in sections 2743.01 to 2743.20 of

the Revised Code, except that if a provision of this section conflicts with a provision in any of those sections, the provision in this section controls.

(E)(1) In a civil action as described in division (D) of this section, the complainant may establish that the claimant is a wrongfully imprisoned individual by submitting to the court of claims a certified copy of the judgment entry of the court of common pleas associated with the claimant's conviction and sentencing, and a certified copy of the entry of the determination of a court of common pleas that the claimant is a wrongfully imprisoned individual. No other evidence shall be required of the complainant to establish that the claimant is a wrongfully imprisoned individual, and the claimant shall be irrebuttably presumed to be a wrongfully imprisoned individual.

(2) In a civil action as described in division (D) of this section, upon presentation of requisite proof to the court, a wrongfully imprisoned individual is entitled to receive a sum of money that equals the total of each of the following amounts:

(a) The amount of any fine or court costs imposed and paid, and the reasonable attorney's fees and other expenses incurred by the wrongfully imprisoned individual in connection with all associated criminal proceedings and appeals, and, if applicable, in connection with obtaining the wrongfully imprisoned individual's discharge from confinement in the state correctional institution;

(b) For each full year of imprisonment in the state correctional institution for the offense of which the wrongfully imprisoned individual was found guilty, forty thousand three hundred thirty dollars or the adjusted amount determined by the auditor of state pursuant to section 2743.49 of the Revised Code, and for each part of a year of being so imprisoned, a pro-rated share of forty thousand three hundred thirty dollars or the adjusted amount determined by the auditor of state pursuant to section 2743.49 of the Revised Code;

(c) Any loss of wages, salary, or other earned income that directly resulted from the wrongfully imprisoned individual's arrest, prosecution, conviction, and wrongful imprisonment;

(d) The amount of the following cost debts the department of rehabilitation and correction recovered from the wrongfully imprisoned individual who was in custody of the department or under the department's supervision:

(i) Any user fee or copayment for services at a detention facility, including, but not limited to, a fee or copayment for sick call visits;

(ii) The cost of housing and feeding the wrongfully imprisoned individual in a detention facility;

(iii) The cost of supervision of the wrongfully imprisoned individual;

(iv) The cost of any ancillary services provided to the wrongfully imprisoned individual.

(F)(1) If the court of claims determines in a civil action as described in division (D) of this section that the complainant is a wrongfully imprisoned individual, it shall enter judgment for the wrongfully imprisoned individual in the amount of the sum of money to which the wrongfully imprisoned individual is entitled under division (E)(2) of this section. In determining that sum, the court of claims shall not take into consideration any expenses incurred by the state or any of its political subdivisions in connection with the arrest, prosecution, and imprisonment of the wrongfully imprisoned individual, including, but not limited to, expenses for food, clothing, shelter, and medical services.

(2) If the wrongfully imprisoned individual was represented in the civil action under this section by counsel of the wrongfully imprisoned individual's own choice, the court of claims shall include in the judgment entry referred to in division (F)(1) of this section an award for the reasonable attorney's fees of that counsel. These fees shall be paid as provided in division (G) of this section.

(3) The state consents to be sued by a wrongfully imprisoned individual because the imprisonment was wrongful, and to liability on its part because of that fact, only as provided in this section. However, this section does not affect any liability of the state or of its employees to a wrongfully imprisoned individual on a claim for relief that is not based on the fact of the wrongful imprisonment, including, but not limited to, a claim for relief that arises out of

circumstances occurring during the wrongfully imprisoned individual's confinement in the state correctional institution.

(G) The clerk of the court of claims shall forward a certified copy of a judgment under division (F) of this section to the president of the controlling board. The board shall take all actions necessary to cause the payment of the judgment out of the emergency purposes special purpose account of the board.

(H) To be eligible to recover a sum of money as described in this section because of wrongful imprisonment, a wrongfully imprisoned individual shall not have been, prior to September 24, 1986, the subject of an act of the general assembly that authorized an award of compensation for the wrongful imprisonment or have been the subject of an action before the former sundry claims board that resulted in an award of compensation for the wrongful imprisonment. Additionally, to be eligible to so recover, the wrongfully imprisoned individual shall commence a civil action under this section in the court of claims no later than two years after the date of the entry of the determination of a court of common pleas that the individual is a wrongfully imprisoned individual.

(2002 S 149, eff. 4-9-03; 1994 H 571, eff. 10-6-94; 1988 H 623, eff. 3-17-89; 1986 H 609)

Uncodified Law

2002 S 149, § 3, eff. 4-9-03, reads:

Sections 117.52, 2743.48, and 2743.49 of the Revised Code, as amended or enacted by this act, apply to civil actions for wrongful imprisonment in the Court of Claims commenced on or after the effective date of this act, or commenced prior to and pending on the effective date of this act.

1988 H 623, § 3, eff. 3-17-89, reads: The amendments to section 2743.48 of the Revised Code that are made in Section 1 of this act do not

apply to any person who, prior to the effective date of this act, has been determined by a court of common pleas to be a wrongfully imprisoned individual, as defined in division (A) of section 2743.48 of the Revised Code as it existed prior to the effective date of this act, and who, because of that determination, has the right to commence a civil action against the state in the court of claims to recover an amount of money as described in section 2743.48 of the Revised Code.

Historical and Statutory Notes

Amendment Note: 2002 S 149 added "and section 2743.49 of the Revised Code" to the first paragraph of division (A); added "an error in procedure resulted in the individual's release, or" to division (A)(5); substituted "correctional" for "penal or reformatory" in division (E)(2)(a); substituted "forty thousand three hundred thirty dollars or the adjusted amount determined by the

auditor of state pursuant to section 2743.49 of the Revised Code" for "twenty-five thousand dollars" twice in division (E)(2)(b); added division (E)(2)(d); and made changes to reflect gender neutral language.

Amendment Note: 1994 H 571 substituted "correctional" for "penal or reformatory" throughout.

Cross References

Auditor shall make adjustment of damage amount for wrongful imprisonment, 117.52

Jurisdiction to hear action for wrongful imprisonment, 2305.02

Library References

False Imprisonment §8, 16.
States §111, 215.
Westlaw Topic Nos. 168, 360.

C.J.S. False Imprisonment §§ 2, 20, 30 to 35.
C.J.S. States §§ 311 to 312, 588 to 591.

Research References

Encyclopedias
OH Jur. 3d Courts & Judges § 281, Jurisdiction in Special Cases.
OH Jur. 3d Courts & Judges § 296, Damages for Wrongful Imprisonment.
OH Jur. 3d False Imprisonment & Malic. Prosecution § 3, False Imprisonment—Who is a "Wrongfully Imprisoned Individual" Entitled to Recover Against State.

OH Jur. 3d False Imprisonment & Malic. Prosecution § 24, State of Ohio.
OH Jur. 3d False Imprisonment & Malic. Prosecution § 42, Excessiveness or Inadequacy.
OH Jur. 3d False Imprisonment & Malic. Prosecution § 43, Generally.
OH Jur. 3d False Imprisonment & Malic. Prosecution § 59, Sufficiency of Evidence.

FISCAL NOTE



BILL	Sub. H.B. 609	DATE	June 3, 1986
STATUS	As Enacted - Effective September 24, 1986	SPONSOR	Rep. Sykes

Fund & Time	Revenues	Expenditures	Appropriations
General Revenue Fund -Annual	-0-	Indeterminate effect	-0-

This act creates a "generic" moral claims statute that permits specified wrongfully imprisoned individuals to file civil actions against the state in the Court of Claims. The act eliminates the need for the General Assembly to consider and enact distinct moral claims bills for such individuals.

EXPLANATION OF ESTIMATE:

This specific act has no immediate fiscal effect, however the provisions it contains governing future wrongful imprisonment claims could change the state's liability for wrongful imprisonment. According to the act, the state would be required to pay a wrongfully imprisoned individual for (1) any fine or court costs imposed and paid by the individual and reasonable attorney's fees and expenses associated with criminal proceedings, appeals, and discharge from the state penal or reformatory institution; (2) \$25,000 for each full year of imprisonment and a pro-rated share of that amount for each partial year; (3) any loss of wages, salary, or other earned income that directly resulted from his arrest, prosecution, conviction, and erroneous imprisonment. No other damages, such as mental anguish, shame, humiliation, reputation, etc., could be recovered from the state by the individual. Also, the state would be prohibited from deducting any expenses associated with the arrest, prosecution, and imprisonment of the individual (i.e. food, clothing, shelter, and medical services).

This act provides a standard award formula for wrongfully imprisoned individuals. Two recent cases were settled for widely disparate judgments.

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EXHIBIT E

FISCAL NOTE



BILL	Am. H.B. 623	DATE	November 17, 1988
STATUS	As Enacted - Effective March 17, 1989	SPONSOR	Rep. Gilmore

Fund & Time	Revenues	Expenditures	Appropriations
State GRF - annual	-0-	Potential indeterminate decrease	-0-

This act prevents someone who pleads guilty of an offense from collecting damages from the state for wrongful imprisonment.

EXPLANATION OF ESTIMATE:

By preventing people who originally pleaded guilty to a felony from bringing civil action against the state through the Court of Claims for wrongful imprisonment, the state could save money. The amount saved would depend on how many determinations of wrongful imprisonment are made by Courts of Common Pleas and how many of those people found to be wrongfully imprisoned pleaded guilty to the offense for which they were imprisoned.

A victim of wrongful imprisonment is currently entitled to recover \$25,000 for each year that he was incarcerated, any lost wages from the period while incarcerated, and legal fees associated with the case before the Court of Claims.

It is difficult to predict future legal liability. Before September of 1986, each person winning a wrongful imprisonment claim against the state received the money through a special bill enacted by the General Assembly. Under that procedure, awards were typically between \$80,000 and \$90,000, but have been as high as \$717,000. According to the Court of Claims, there have been five people who have claimed wrongful imprisonment against the state since the current generic moral claims law was enacted in September of 1986. Of those five, one had pleaded guilty with the rest being found guilty at jury trials. One of the five cases has been settled (for \$130,401.40). Any money that the state would owe in a settlement would be paid through the Emergency Purposes Account in the Controlling Board.

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EXHIBIT F

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Reps. Gilmore, Davis, T. Johnson

Sen. Watts

Excludes from the coverage of the Generic Moral Claims Statute any person who pleaded guilty to the offense for which he is imprisoned.

Provides further limitations on those persons who may qualify as being wrongfully imprisoned under the statute.

CONTENT AND OPERATION

Existing law

Civil action. The Generic Moral Claims Statute (GMCS) (sec. 2743.48 of the Revised Code) creates a civil action against the state for "wrongfully imprisoned individuals." The Court of Claims has exclusive, original jurisdiction over such actions, which must be brought within two years after a court of common pleas determines that the individual is a "wrongfully imprisoned individual." (Sec. 2743.48(B), (D), (F)(3), and (H).)

Definition. "Wrongfully imprisoned individual" is defined as an individual who satisfies all of the following (sec. 2743.48(A)):

1. He was charged with an aggravated felony or felony;
2. He was found guilty of the charged aggravated felony or felony or of a lesser-included offense that was an aggravated felony or felony;
3. He was sentenced to a state penal or reformatory institution as a result of the conviction;
4. Subsequent to his sentencing and during or subsequent to his imprisonment, a court of common pleas determined that the offense of which he was found guilty, and all lesser-included offenses, either was not committed by him or was not committed by any person.

* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal.

Court of common pleas functions. The courts of common pleas have exclusive, original jurisdiction to hear and determine any action or proceeding brought by a person who satisfies the first three conditions of the definition of "wrongfully imprisoned individual" and who seeks a determination of whether 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 (thus qualifying under the fourth condition of the definition) (sec. 2305.02). When a court of common pleas makes such a determination that a person is a wrongfully imprisoned individual, it must provide him with a copy of the GMCS and orally inform him and his attorney of his rights under it. It also must notify the Clerk of the Court of Claims, in writing and within seven days, of the name and proposed mailing address of the individual and of the fact that he has the right to bring an action under the GMCS. (Sec. 2743.48(B).)

Clerk of Court of Claims functions. The Clerk of the Court of Claims must maintain a list of wrongfully imprisoned individuals for whom he has received notices from courts of common pleas and create files for each individual (sec. 2743.48(B)(2)). The Clerk must send an individual who does not bring an action under the GMCS within six months of the determination by the court of common pleas a notice of his rights under that statute and continue such notices every three months (sec. 2743.48(C)).

Procedures in Court of Claims. A civil action under the GMCS is determined in the same manner as other actions in the Court of Claims unless the GMCS provides a different controlling procedure. A person bringing such an action can establish that he is a "wrongfully imprisoned individual" by submitting a certified copy of the judgment entry of the court of common pleas making such a determination. No other evidence is necessary to establish his status. (Sec. 2743.48(D) and (E)(1).)

Recoverable damages. A wrongfully imprisoned individual is entitled to recover, upon presentation of necessary proof, the amount of any fines or court costs paid and attorney's fees incurred in the criminal proceedings and appeals leading to his wrongful imprisonment and in obtaining his release from imprisonment; \$25,000 for each full year of wrongful imprisonment and a pro-rata share for each part of a year so imprisoned; any loss of wages, salary, or other earned income that directly resulted from his arrest, prosecution, conviction, and wrongful imprisonment; and his attorney's fees for obtaining a judgment in the Court of Claims. The Court of Claims cannot take into account any expenses incurred by the state or any political subdivision in connection with his arrest, prosecution, or imprisonment. (Sec. 2743.48(B)(2) and (F)(2).)

The Clerk of the Court of Claims must forward a certified copy of the judgment to the President of the Controlling Board, which must take all actions necessary to pay the judgment to the wrongfully imprisoned individual (sec. 2743.48(G)).

Excluded individuals. The GMCS does not apply to any person who, prior to the enactment of the GMCS, was the subject of a moral claims act or an action before the former Sundry Claims Board for his wrongful imprisonment (sec. 2743.48(H)).

The bill

Definition of wrongfully imprisoned individual. The bill would amend the definition of wrongfully imprisoned individual as follows (sec. 2743.48(A)):

1. To exclude individuals who pleaded guilty to the offense for which they were imprisoned. Under the bill, a person who is imprisoned for an offense that he did not commit or that was never committed but who pleaded guilty to the offense would not qualify as being wrongfully imprisoned under the GMCS.

2. To include an individual only if his conviction is vacated or dismissed, or reversed on appeal, the prosecuting attorney in the case cannot or will not seek any further appeal, and no criminal proceeding is pending, can be brought, or will be brought by any prosecuting attorney against the individual for any act associated with that conviction.

Jurisdiction of courts of common pleas. Under the bill, the court of common pleas would continue to have exclusive, original jurisdiction to determine whether the offense of which a person was found guilty, including all lesser-included offenses, either was not committed by him or was not committed by any person; however, that jurisdiction only would exist if the person, in addition to the three conditions required by existing law to vest jurisdiction in the court, meets the additional conditions set forth in the revised definition of "wrongfully imprisoned individual." (Sec. 2305.02.)

Applicability. Section 3 of the bill states that its changes do not apply to any person who was determined to be a wrongfully imprisoned individual by a court of common pleas, as that term was defined before the bill's effective date, and who thus has a right to bring a claim under the GMCS.

ACTION	DATE	JOURNAL ENTRY
Introduced	10-06-87	p. 1215
Reported, H. Judiciary & Criminal Justice	03-09-88	pp. 1560-1561
Passed House (51-41)	03-17-88	pp. 1751-1752
Reported, S. Judiciary		

Am. H.B. 623
(As Passed by the House)

Reps. Gilmore, Davis, T. Johnson

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Definition. "Wrongfully imprisoned individual" is defined as an individual who satisfies all of the following (sec. 2743.48(A)):

1. He was charged with an aggravated felony or felony;
2. He was found guilty of the charged aggravated felony or felony or of a lesser-included offense that was an aggravated felony or felony;
3. He was sentenced to a state penal or reformatory institution as a result of the conviction;
4. Subsequent to his sentencing and during or subsequent to his imprisonment, a court of common pleas determined that the offense of which he was found guilty, and all lesser-included offenses, either was not committed by him or was not committed by any person.

Court of common pleas functions. The courts of common pleas have exclusive original jurisdiction to hear and determine any action or proceeding brought by a person who seeks to test the constitutionality of the definition of "wrongfully imprisoned individual" and who seeks a determination of whether 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 (thus qualifying under the fourth condition of the definition) (sec. 2305.02). When a court of common pleas makes such a determination that a person is a wrongfully imprisoned individual, it must provide him with a copy of the GMCS and orally inform him and his attorney of his rights under it. It also must notify the Clerk of the Court of Claims, in writing and within seven days, of the name and proposed mailing address of the individual and of the fact that he has the right to bring an action under the GMCS. (Sec. 2743.48(B).)

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Procedures in Court of Claims. A civil action under the GMCS is determined in the same manner as other actions in the Court of Claims unless the GMCS provides a different controlling procedure. A person bringing such an action can establish that he is a "wrongfully imprisoned individual" by submitting a certified copy of the judgment entry of the court of common pleas making such a determination. No other evidence is necessary to establish his status. (Sec. 2743.48(D) and (E)(1).)

Recoverable damages. A wrongfully imprisoned individual is entitled to recover, upon presentation of necessary proof, the amount of any fines or court costs paid and attorney's fees incurred in the criminal proceedings and appeals leading to his wrongful imprisonment and in obtaining his release from imprisonment; \$25,000 for each full year of wrongful imprisonment and a pro-rata share for each part of a year so imprisoned; any loss of wages, salary, or other earned income that directly resulted from his arrest, prosecution, conviction, and wrongful imprisonment; and his attorney's fees for obtaining a judgment in the Court of Claims. The Court of Claims cannot take into account any expenses incurred by the state or any political subdivision in connection with his arrest, prosecution, or imprisonment. (Sec. 2743.48(E)(2) and (F)(2).)

The Clerk of the Court of Claims must forward a certified copy of the judgment to the President of the Controlling Board, which must take all actions necessary to pay the judgment to the wrongfully imprisoned individual (sec. 2743.48(G)).

Excluded individuals. The GMCS does not apply to any person who, prior to the enactment of the GMCS, was the subject of a moral claims act or an action before the former Sundry Claims Board for his wrongful imprisonment (sec. 2743.48(H)).

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2. To include an individual only if his conviction is vacated, dismissed, or reversed on appeal, the prosecuting attorney in the case cannot or will not seek any further appeal, and no criminal proceeding is pending, can be brought, or will be brought by any prosecuting attorney against the individual for any act associated with that conviction.

Jurisdiction of courts of common pleas. Under the bill, the court of common pleas would continue to have exclusive, original jurisdiction to determine whether the offense of which a person was found guilty, including all lesser-included offenses, either was not committed by him or was not committed by any person; however, that jurisdiction only would exist if the person, in addition to the three conditions required by existing law to vest jurisdiction in the court, meets the additional conditions set forth in the revised definition of "wrongfully imprisoned individual." (Sec. 2305.02.)

Applicability. Section 3 of the bill states that its changes do not apply to any person who was determined to be a wrongfully imprisoned individual by a court of common pleas, as that term was defined before the bill's effective date, and who thus has a right to bring a claim under the GMCS.

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