

CLARK COUNTY
COURT OF APPEALS

JUN 12 2015

FILED
RONALD E. VINCENT, CLERK

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

OMAR K. JAMES

Petitioner-Appellant

v.

STATE OF OHIO

Respondent-Appellee

:
: Appellate Case No. 2013-CA-28
:
: Trial Court Case No. 09-CV-1251
:
: (Civil Appeal from
: Common Pleas Court)
:
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DECISION AND ENTRY

Rendered on the 11th day of June, 2015

PER CURIAM:

This matter comes before the Court upon the State of Ohio's application for reconsideration. When reviewing a motion for reconsideration filed pursuant to App. R. 26(A), we look to see whether the motion demonstrates an obvious error in our decision or raises an issue that was either not considered or not fully considered by the court. *City of Columbus v. Hodge*, 37 Ohio App. 3d 68, 523 N.E. 2d 515 (10th Dist. 1987). The motion for reconsideration may not raise new issues not previously raised. *Fenton v. Time Warner Entertainment Co.*, 2d Dist. Montgomery No.19755, 2003-Ohio-6317, ¶ 2 citing *Hodge*.

On February 20, 2015, we rendered a decision in James's favor after remand from the Supreme Court of Ohio, *James v. State*, 139 Ohio St. 3d 1401, 2014-Ohio-2245, 9 N.E.3d 1060, finding that James was a "wrongfully imprisoned individual" for purposes of the wrongful incarceration statute, R.C. 2743.48(A). The State filed this application for reconsideration, contending that our decision contained two errors. First, the State argues that James does not meet the requirements of the statute because the error we identified as "an error subsequent to sentencing or imprisonment" was not the error that resulted in James's release from prison. The State further argues that at the time the error we identified as "an error subsequent to sentencing or imprisonment" was made, James had already been released from prison. The State also asks us to reconsider the issue of whether James met the requirement of R.C. 2743.48(A)(4), which was not addressed in our decision on remand.

James responds with a factual argument that the initial federal court decision granting a conditional writ ordering his release or retrial was issued in 2005, he was discharged from imprisonment in 2008, and then he was subject to a bond for over a year and not released from all charges until 2010. James acknowledges that a stay of the writ was issued by the federal court in 2006, until the Sixth Circuit affirmed the district court in November, 2006. However, none of these factual allegations were necessary to the determination that James met the requirements of R.C. 2743.48(A)(1) through (5). The determination of the amount of compensation James may recover for the time wrongfully spent in prison, if any, as a result of the procedural error that led to the release of all charges against him, is within the jurisdiction of the Court of Claims, pursuant to R.C. 2743.48(E). Additionally, the Court of Claims will decide what amount, if any, that

James is entitled to recover for other expenses and losses incurred in connection with all associated criminal proceedings and appeals. R.C. 2743.48(E)(2)(a).

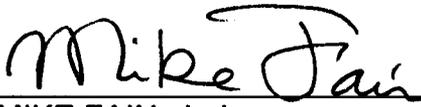
If our decision inaccurately refers to facts supporting a finding that the procedural error directly resulted in James's release from prison, this reference to a potentially erroneous conclusion in the factual record is harmless. The statute, R.C. 2743.48(A)(5) specifically provides that the procedural error may occur "subsequent to imprisonment," which supports an interpretation of the term "release" to mean action that is more inclusive than just a discharge from prison. Construing the term "release" as that term is used in R.C. 2743.48(A)(5) *in pari materia* with the language of R.C. 2743.48(A)(1) and (2), which refers to "charges," and with R.C. 2743.48(A)(4), which requires a finding that no charges can be brought against the claimant, we conclude that the term "release" within the meaning of subsection (A)(5) of the wrongful imprisonment statute may include a release from all "charges," in addition to a discharge from confinement.

We also conclude that the remand from the Supreme Court of Ohio did not require us to reconsider our previous finding that James met the requirement of R.C. 2743.48(A)(4). The remand required us to apply the holding of *Mansaray v. State*, 138 Ohio St. 3d 277, 2014-Ohio-750, 6 N.E. 3d 35, to reconsider whether James met the requirement of R.C. 2743.48(A)(5). We sufficiently addressed this issue in our discussion of the trial court's "Entry and Order of Dismissal, *with Prejudice*" (emphasis added), which establishes in the record that the charges against James cannot be refiled, meeting the requirement of R.C. 2743.48(A)(4). As we previously determined, James has established all five requirements of the wrongful incarceration statute, and should now be able to proceed with his claim in the Court of Claims of Ohio.

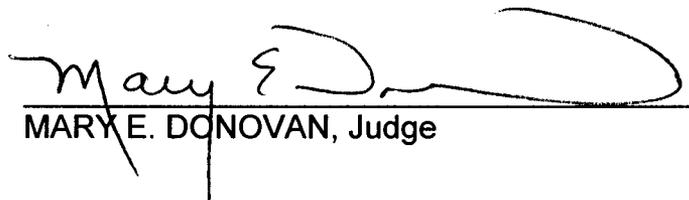
Accordingly, the State's application for reconsideration is denied.



JEFREY E. FROELICH, Presiding Judge



MIKE FAIN, Judge



MARY E. DONOVAN, Judge

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