

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 14-0735
	:	
Plaintiff/Appellant,	:	On Appeal from
	:	the Cuyahoga
v.	:	County Court of
	:	Appeals, Eighth
C.K.	:	Appellate District
	:	
Defendant/Appellee.	:	Court of Appeals
	:	Case No. CA-13-100193
	:	
	:	
	:	

**MOTION FOR RECONSIDERATION OF
DECISION ON THE MERITS**

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September 4, 2015

I. INTRODUCTION

This court held that even an innocent person convicted of murder cannot show, as a matter of law, he was wrongfully imprisoned merely because of “absence of any current plans to prosecute” or “lack of any active investigation seeking new evidence of guilt.” C.K. v. State, Slip Opinion No. 2015-Ohio-3421 at ¶19. C.K. does not challenge that holding. The current case posture, however, should permit remand to the trial court for further discovery to demonstrate facts supporting the conclusion the prosecutor “will not” bring additional criminal charges under Civil Rule 56(f).

Reconsideration of the Court’s judgment entry for the narrow purpose of affording this discovery is appropriate, serves the interests of justice, and will not alter the Court’s announced rule of law.

II. ANALYSIS

C.K. and the State filed cross motions for summary judgment, and the State’s motion was granted on the narrow legal basis that C.K. could never prove he is entitled to compensation as a wrongfully imprisoned individual as a matter of law. This Court held that C.K. cannot show, merely through evidence of lack of current plans to prosecute or lack of any active investigation seeking new evidence of guilt, that the State will not bring criminal proceedings. This leaves open the possibility of demonstrating,

through direct evidence, that the State will not, in fact, re-prosecute C.K., an eventuality the trial court did not consider.

In light of the new rule of law announced in the Court's decision, the matter should be remanded for further discovery on precisely this evidentiary point. This Court has consistently held remand for further discovery proceedings can be appropriate where a new standard is announced or clarified that affects discovery in the underlying Trial Court. See, e.g., Clark v. Hawkes Hosp. of Mt. Carmel, 9 Ohio St.3d 182, 183, 459 N.E.2d 559, 561, 9 O.B.R. 467 (1984) ("Appellant and appellee each addressed this case based upon the old *Wylor* standard of termination. On remand the trial court will provide the parties the opportunity to address the appellant's actual or constructive discovery of the infection as a resulting injury of appellee's alleged malpractice."); Inland Refuse Transfer Co. v. Browning-Ferris Industries of Ohio, Inc., 15 Ohio St.3d 321, 324, 474 N.E.2d 271, 274, 15 O.B.R. 448 (1984) ("In light of our conclusion that the express terms of the Land Contract did not provide for the duration of the Landfill Agreement, it follows that evidence would be admissible on that issue and discovery should be allowed.").

In this case, the Court's judgment entry reflects a different standard than either party—or the Trial Court—considered, one which may present a

narrow evidentiary opportunity, but an opportunity nonetheless. C.K. may, or may not, be able to discover sufficient evidence. C.K. has consistently requested the opportunity to have the Trial Court address new issues for the first time. (See, e.g., Plaintiff-Appellee's (C.K.'s) Brief at 31.) Under Rule 56(f), however, he should be entitled to the opportunity.

C.K. asks the Court to modify the Judgment Entry to add, following the final sentence reversing the appellate court, the following: "The cause is remanded to the trial court for further proceedings consistent with this opinion, including additional discovery regarding whether the prosecution will not seek additional criminal proceedings."

III. CONCLUSION

Reconsideration on the narrow issue of remanding to permit additional discovery under Rule 56(f) is appropriate, and will not alter in any way the legal principles established in the Court's judgment entry. Justice will be served by allowing the discovery, while preserving the legal effect of the Court's holding.

Respectfully submitted,



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CERTIFICATE OF SERVICE

On September 4, 2015, a true and correct copy of the foregoing was filed electronically via the Court's electronic system, and sent via regular U.S. Mail, postage prepaid, to:

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