

**IN THE SUPREME COURT OF OHIO**

C.K.,	:	Case No. 2014-0735
	:	
Appellee,	:	On Appeal from the
	:	Cuyahoga County
v.	:	Court of Appeals,
	:	Eighth Appellate District
STATE OF OHIO,	:	
	:	Court of Appeals
Appellant.	:	Case No. 100193
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**STATE OF OHIO'S OPPOSITION TO APPELLEE, C.K.'S MOTION FOR RECONSIDERATION OF DECISION ON MERITS**

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Defendant-Appellant, State of Ohio (“the State”) respectfully submits this memorandum in response to Plaintiff-Appellee’s Motion for Reconsideration (“Pl. Mot.”). The authority to reconsider allows the Court to “correct decisions which, upon reflection, are deemed to have been made in error.” *State ex rel. Shemo v. Mayfield Hts.*, 96 Ohio St.3d 379, 2002-Ohio-4905, 775 N.E.2d 493, ¶ 5 (internal quotations omitted). The majority found, “[t]he decision to defer prosecution pending the discovery of stronger evidence of guilt is insufficient to establish that no criminal proceeding can be brought or will be brought against C.K. for any act associated with Coleman’s murder. Therefore, as a matter of law, C.K. cannot establish the requirement of R.C. 2743.48(A)(4).” *C.K. v. State*, Slip Opinion No. 2015-Ohio-3421, ¶ 21. Justices Lanzinger and French concurred in judgment noting, “According to the language of [R.C. 2743.48(A)(4)], a dismissal without prejudice on a charge of murder precludes a claimant from eligibility as a wrongfully imprisoned individual.” *Id.* at ¶ 27. Justice O’Neil dissented without opinion.

Plaintiff’s motion asks this Court to “permit remand to the trial court for further discovery...” Pl. Mot. at p.1. No remand for more discovery in the trial court is warranted. In its opinion, the majority definitively ruled that Plaintiff cannot show entitlement to relief under the wrongful imprisonment statute’s fourth prong, as a matter of law. “[B]ecause there is no statute of limitations for murder, a new criminal proceeding can be brought at any time, and because the timing of that event is left to the discretion of the prosecutor, C.K. cannot prove that no criminal proceeding can or will be brought against him in the future.” *C.K. v. State*, Slip Opinion No. 2015-Ohio-3421, ¶ 19. Moreover – although Plaintiff asserts that he is not seeking to reargue this case – the issues raised by Plaintiff, including his claimed entitlement to further discovery, were raised and argued in Plaintiff’s brief on the merits and rejected by this Court. Pl. Brief at pp. 26-

30. Accordingly, Plaintiff's motion only constitutes an impermissible re-argument of the case and should be denied in its entirety. S. Ct. Prac. R. 18.02(B).

**I. PLAINTIFF'S ARGUMENTS REGARDING DISCOVERY ARE IMPERMISSIBLE ATTEMPTS TO REARGUE ISSUES ALREADY PRESENTED TO AND REJECTED BY THIS COURT.**

In moving for reconsideration, Plaintiff relies heavily on the argument that he is entitled to pursue more discovery in the trial court and then another chance at wrongful imprisonment compensation. Plaintiff, however, fully presented his contentions regarding the possibility of a new murder indictment to this Court in his merits brief. See Pl. Merits Br. at pp. 20-30. He may not reargue those contentions in a motion for reconsideration. See S.Ct.Prac.R. 18.02(B). While Plaintiff now argues to this Court that further discovery is needed, Plaintiff made other arguments in the proceedings below that contradicted the purported need for further discovery: Plaintiff moved for summary judgment in the trial court. Only after the trial court's summary judgment against Plaintiff was reinstated by this Court, does C.K. belatedly ask for a second bite at the apple. In the guise of seeking a remand for further discovery enabling him to reargue previously presented claims, Plaintiff extensively re-hashes arguments he already presented, which this Court has rejected. In short, Plaintiff has not shown that more discovery or evidence would change the character of the extensive evidence that was reviewed and evaluated by the Court in reversing the Eighth District Court of Appeal's departure from the unambiguous statutory text of R.C. 2743.48(A)(4).

Ohio law requires wrongful imprisonment *claimants* to prove in the entirety that "no criminal proceeding is pending, can be brought, or will be brought by any prosecuting attorney..." R.C. 2743.48(A)(4). Plaintiff admits he intentionally caused the death of another. The County Prosecutor, through his assistant, is on record stating that C.K.'s criminal case "remains open,

without prejudice to re-filing/re-indicting...” *C.K. v. State*, Slip Op. No. 2015-Ohio-3421, ¶ 8. Even when reviewing the evidence in the light most favorable to C.K., it is impossible for him to meet his burden to show compliance with the fourth element of the statute. Plaintiff’s lawyers apparently believe they have been elected to the position of Cuyahoga County Prosecutor and their beliefs should trump the stated intentions of a duly elected Prosecutor, as well as the elected Prosecutor’s statutory authority. Under the facts and circumstances of this case, Cuyahoga County’s Prosecutor retains his authority to bring charges against Plaintiff. That authority alone disqualifies Plaintiff from wrongful imprisonment compensation as a matter of law.

**II. THE COURT’S HOLDING REGARDING THE “CANNOT/WILL NOT” REQUIREMENT OF THE STATUTE’S FOURTH PRONG DOES NOT WARRANT GIVING PLAINTIFF MORE DISCOVERY AND ANOTHER CHANCE AT COMPENSATION.**

Plaintiff also erroneously contends that reconsideration is warranted because the Court supposedly adopted a “new rule of law” on R.C. 2743.48(A)(4), and that Plaintiff therefore should be permitted a further opportunity to gather still more evidence and again seek certification as a wrongfully imprisoned person. See Pl. Mot. at 3-4. This Court’s interpretation of the law in Ohio, normally applies retrospectively, even beyond the case at hand, as though that law had always applied. See *Kohus v. Hartford Ins. Co.*, 8th Dist. No. 83071, 2004-Ohio-231, ¶ 4, citing *Peerless Elec. Co. v. Bowers*, 164 Ohio St. 209, 210, 129 N.E.2d 467 (1964). The unambiguous statutory text at issue has been in the statute’s fourth prong since 1989. See State’s Merit Br. at 9-10. Thus, even if the plain language application of R.C. 2743.48(A)(4) was new (which it is not), the express recognition that “statutes mean what they say” still would not provide a basis for permitting further discovery in this case.

The words the *legislature* wrote over twenty-five years ago are clear. Since then, R.C. 2743.48(A)(4) has required Claimants to prove that no case “can be brought, or will be brought by

any prosecuting attorney...” Plaintiff essentially advocates for a judicial exemption for formerly convicted murders, successful on appeal, even though the County Prosecutor later dismisses without prejudice and expressly states an intent to re-indict with additional evidence. Plaintiff wants a pass on proving the fourth element, claiming that forcing him to prove it leads to an absurd and unreasonable result. Pl. Merit Brief at p. 25. “This tension presents a public-policy concern that is the purview of the legislature. Our role is to apply the language of the statute that is the legislature’s expression of public policy.” *In re Foreclosure of Liens for Delinquent Land Taxes v. Parcels of Land Encumbered with Delinquent Tax Liens*, 140 Ohio St.3d 346, 2014-Ohio-3656, ¶ 17. “If the General Assembly is dissatisfied with our interpretation, it may amend the Revised Code.” *Anderson v. Barclay’s Capital Real Estate, Inc.*, 136 Ohio St.3d 31, 2013-Ohio-1933, ¶ 25. It is equally unreasonable and unjust to compensate defendants who admit to killing another human being, get convicted by a jury, but are successful on appeal.

### **CONCLUSION**

For the foregoing reasons, the State respectfully submits that the Court should deny Plaintiff’s motion in its entirety.

Respectfully submitted,

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