

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Ronald Larkins,	:	
Plaintiff-Appellant,	:	
v.	:	No. 09AP-140 (C.C. No. 2008-11028-WI)
The State of Ohio,	:	(ACCELERATED CALENDAR)
Defendant-Appellee.	:	

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D E C I S I O N

Rendered on June 30, 2009

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*Carpenter, Lipps & Leland LLP, and Kort Gatterdam; David B. Malik, David F. Hanson; Robert E. Davis, for appellant.*

*Richard Cordray, Attorney General, Peter E. Demarco, and Amy S. Brown, for appellee.*

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APPEAL from the Court of Claims of Ohio.

SADLER, J.

{¶1} Appellant, Ronald Larkins ("appellant"), seeks reversal of a judgment by the Court of Claims of Ohio dismissing his claim seeking damages for being a wrongfully imprisoned individual pursuant to R.C. 2743.48. For the reasons that follow, we reverse.

{¶2} Appellant was indicted on one count of aggravated murder, one count of attempted murder, and one count of aggravated robbery arising from the robbery of a pawnshop in Cleveland on May 28, 1981. After a bench trial, appellant was convicted on all three charges and sentenced to life in prison.

{¶3} In 1992, appellant filed a writ of mandamus action seeking the release of certain documents relied on by the state in appellant's prosecution. The requested writ was denied by the Supreme Court of Ohio in *State ex rel. Steckman v. Jackson* (1994), 70 Ohio St.3d 420. In 1999, Bishop Alfred Nickles of Cincinnati filed a public records request with the Cleveland Police Department seeking the same documents appellant had sought to obtain through the writ of mandamus action. The documents were provided in response to that public records request.

{¶4} The documents obtained resulted in appellant filing a motion seeking a new trial. After holding a hearing on the motion, the Cuyahoga County Court of Common Pleas concluded that the documents included exculpatory evidence that should have been turned over to appellant pursuant to *Brady v. Maryland* (1963), 373 U.S. 83, 83 S.Ct. 1194. The court of common pleas concluded that appellant was entitled to a new trial. The state appealed, and the Eighth District Court of Appeals affirmed. *State v. Larkins*, 8th Dist. No. 82325, 2003-Ohio-5928. The Supreme Court of Ohio declined to accept the state's appeal for review on April 14, 2004. *State v. Larkins*, 102 Ohio St.3d 1410, 2004-Ohio-1763.

{¶5} On July 14, 2004, appellant filed a motion to dismiss the charges against him with the Cuyahoga County Court of Common Pleas. The court of common pleas granted the motion to dismiss, and the Eighth District Court of Appeals affirmed. *State v.*

*Larkins*, 8th Dist. No. 85877, 2006-Ohio-90. The Supreme Court of Ohio declined to accept the state's appeal for review on June 7, 2006. *State v. Larkins*, 109 Ohio St.3d 1495, 2006-Ohio-2762.

{¶6} On December 22, 2006, appellant commenced an action in the Cuyahoga County Court of Common Pleas pursuant to R.C. 2305.02 seeking a declaration that he was a wrongfully imprisoned individual as defined in R.C. 2743.48. Appellant entered into a joint stipulation with the state that appellant had been released as the result of an error in procedure. Based on that stipulation, the court of common pleas found that appellant was a wrongfully imprisoned individual.

{¶7} On September 17, 2008, appellant filed a complaint in the Court of Claims of Ohio seeking to recover damages based on the declaration that he was a wrongfully imprisoned individual. Included with the complaint was a copy of the order declaring appellant to be a wrongfully imprisoned individual. A proposed settlement agreement entered into by appellant and the state was filed on October 23, 2008. On November 5, 2008, the court of claims dismissed the complaint without prejudice for lack of subject matter jurisdiction based on appellant's failure to comply with statutory requirements set forth in R.C. 2305.02 and 2743.48.

{¶8} On November 18, 2008, appellant filed a new complaint in the court of claims. Attached to that complaint was an amended order issued by the Cuyahoga County Court of Common Pleas that was intended to address the deficiencies identified by the trial court in the previous dismissal. A notice of settlement was filed on November 24, 2008. On January 30, 2009, the court of claims, sua sponte, dismissed appellant's claim, finding that it lacked subject matter jurisdiction. The basis for this

conclusion was the court's conclusion that the Cuyahoga County Court of Common Pleas lacked jurisdiction to determine that appellant was a wrongfully imprisoned individual based on a procedural error.

{¶9} Appellant filed this appeal, alleging a single assignment of error:

THE COURT OF CLAIMS ERRED IN DISMISSING RONALD LARKINS' COMPLAINT BY IGNORING THE OHIO LEGISLATURE'S INTENT TO EXPAND THE CRITERIA FOR "WRONGFULLY IMPRISONED INDIVIDUAL" CAUSES OF ACTION.

{¶10} The court of claim's dismissal of the complaint was based on its interpretation of R.C. 2305.02 and 2743.48. R.C. 2305.02 provides:

A court of common pleas has exclusive, original jurisdiction to hear and determine an action or proceeding that is commenced by an individual who satisfies divisions (A)(1) to (4) of section 2743.48 of the Revised Code and that seeks a determination by the court 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. If the court enters the requested determination, it shall comply with division (B) of that section.

R.C. 2743.48 provides, in pertinent part:

(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.

{¶11} In this case, appellant was proceeding on a claim that he satisfied R.C. 2743.48(A)(5) because an error in procedure resulted in his release, not that the offense of which he had been convicted was either not committed by him or was not committed at all. The court of claims dismissed appellant's complaint based on its conclusion that because R.C. 2305.02 refers only to the jurisdiction of a court of common pleas to make a finding that an individual was wrongfully imprisoned because the offense was not committed by the individual or was not committed at all, the Cuyahoga County Court of Common Pleas had no jurisdiction to make the determination that appellant was wrongfully imprisoned based on a procedural error.

{¶12} We recently considered the interplay between R.C. 2305.02 and 2743.48 in a case in which an individual had sought a declaration of wrongful imprisonment based on a procedural error by filing the complaint directly in the court of claims. *Griffith v.*

*State*, 10th Dist. No. 08AP-964, 2009-Ohio-2854. We concluded that, while only a court of common pleas can make a declaration that an individual was wrongfully imprisoned for an offense that was either not committed by the individual or was not committed at all, a determination that an individual was wrongfully imprisoned based on a procedural error could be made by the court of claims. *Id.* at ¶16.

{¶13} Furthermore, we have now had occasion to consider the question of whether the court of claims has jurisdiction to hear a case seeking damages for wrongful imprisonment based on a finding by a court of common pleas that the individual was released as the result of a procedural error, and concluded that the court of claims does have jurisdiction in such cases. *Nelson v. State*, 10th Dist. No. 08AP-1086, 2009-Ohio-\_\_\_\_\_.

{¶14} Based on the reasoning set forth in *Griffith* and *Nelson*, we sustain appellant's assignment of error, reverse the judgment by the Court of Claims of Ohio, and remand this case for further proceedings consistent with this case and with the law.

*Judgment reversed and cause remanded.*

FRENCH, P.J., and McGRATH, J., concur.

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