

IN THE COURT OF CLAIMS OF OHIO

IN RE: CARL E. WHITACRE

Case No. 2024-00281VI

CARL E. WHITACRE

Magistrate Holly True Shaver

Applicant

DECISION OF THE MAGISTRATE

{¶1} On June 11, 2024, the court held an oral hearing via Zoom videoconferencing on Carl E. Whitacre’s (“applicant”) appeal of the Attorney General’s (“AG”) March 6, 2024 final decision. Applicant appeared at the hearing and represented himself; Assistant Attorney General Lauren Angell appeared on behalf of the state.

{¶2} According to the application dated January 8, 2024, applicant seeks an award of reparations for expenses incurred as a result of a June 30, 2019 incident. In its final decision, the AG found that the claim must be denied because applicant filed the claim more than three years after the alleged criminally injurious conduct.

{¶3} Applicant testified that on June 30, 2019, a law enforcement officer appeared at applicant’s home and used excessive force when taking applicant into custody. Applicant stated that applicant was unable to file a claim for reparations within three years of the event because applicant was incarcerated most of the time and Covid-19 caused institutional dysfunction so much so that applicant was not able to access the resources necessary to file a claim.

{¶4} The AG argued that applicant’s claim must be denied because applicant filed the claim outside of the three-year statute of limitations found in R.C. 2743.60(A)(2). The AG stated that because the alleged criminally injurious conduct occurred on June 30, 2019, applicant had until June 30, 2022, to file a claim. The AG contended that because applicant filed this claim on January 8, 2024, one and a half years after the statutory deadline, it must be denied. The AG further argued that applicant had not identified any legitimate reason why the statute of limitations should be tolled in this case.

{¶5} On an initial matter, as the magistrate noted during the hearing, the sole issue in this case is whether the application was timely filed. Therefore, applicant's June 4, 2024 motion to arrange an expert witness and applicant's June 13, 2024 motion to file a post hearing brief are DENIED as moot.

{¶6} R.C. 2743.61(B) states, in pertinent part:

If upon hearing and consideration of the record and evidence, the court decides that the decision of the attorney general appealed from is reasonable and lawful, it shall affirm the same. If the court decides that the decision of the attorney general is not supported by a preponderance of the evidence or is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter judgment thereon.

{¶7} R.C. 2743.52(A) places the burden of proof on an applicant to satisfy the court of claims that the requirements for an award have been met by a preponderance of the evidence. *In re Rios*, 8 Ohio Misc.2d 4 (Ct. of Cl. 1983).

{¶8} R.C. 2743.60(A)(2)(a) states, in pertinent part: "the attorney general or the court of claims shall not make or order an award of reparations to a claimant if the claim is based on criminally injurious conduct that occurred more than three years before the claim was filed." R.C. 2743.60(A)(2)(b) and (c) provide exceptions to this rule for claimants under 21 years of age at the time of the criminally injurious conduct and for claims that had been denied under the law as it existed prior to March 2, 2022. However, neither of these provisions are applicable in this case. R.C. 2743.60(A)(2)(d) states that "the attorney general is permitted to make an award of reparations at any time for good cause shown." However, it does not allow the court to make such a determination.

{¶9} Applicant filed an application with the AG on January 8, 2024, over four years after the alleged criminally injurious conduct on June 30, 2019. Because none of the tolling exceptions in R.C. 2743.60(A)(2) apply to applicant, the application was not timely filed.

{¶10} Upon review of the evidence in the case file, in consideration of the arguments and testimony presented at the hearing, and for the reasons stated above, the magistrate finds that applicant's application for reparations is barred by the applicable statute of limitations found in R.C. 2743.60(A)(2). The magistrate concludes that the final

decision of the AG is reasonable and lawful. Therefore, the magistrate recommends that the final decision of the AG be affirmed

{¶11} A party may file written objections to the magistrate's decision within 14 days of *the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i).* If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

HOLLY TRUE SHAVER
Magistrate