



1-8-1996

## Petitioner's Brief in Opposition to Motion to Strike, or, in the Alternative, Motion to Dismiss

Terry H. Gilbert  
*Attorney for Sheppard Estate*

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IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

STATE OF OHIO	)	CASE NO. CR 64571
	)	
Plaintiff	)	JUDGE RONALD SUSTER
	)	
-vs-	)	
	)	<u>PETITIONER'S BRIEF IN OPPOSITION</u>
SAMUEL SHEPPARD	)	<u>TO MOTION TO STRIKE, OR IN THE</u>
	)	<u>ALTERNATIVE, MOTION TO DISMISS</u>
Defendant	)	

The State, in its Motion to Strike, argues that the requested determination that Samuel Sheppard was a wrongfully imprisoned individual, pursuant to R.C. 2305.02, requires the application of the Ohio Rules of Civil Procedure. The State is clearly wrong. No where in either R.C. 2743.48 or R.C. 2305.02 is it required that the formal Rules of Civil Procedure be invoked when seeking such a determination.

There are two steps necessary to recovery under a wrongful incarceration claim. Preliminarily, the Court of Common pleas must make a **determination** "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". R.C.2743.48(A)(5).<sup>1</sup> The statute goes on to require that the Common Pleas Court, once having made a determination that "a person is a wrongfully imprisoned individual, " must provide notice to the individual and his attorney that he has a right to commence a **civil action** in the

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<sup>1</sup> There is no reason why such "determination" cannot be made by motion, petition or application to the trial court assigned to the criminal case.

Court of Claims. Thus, the only civil action contemplated is the action filed in the Court of Claims which has separate rules of practice. See Rules of the Court of Claims of Ohio. The civil action requires only the presentation of the certified copy of the judgment entry associated with the conviction and sentencing, and the judgment entry of the wrongful incarceration determination. No other evidence is required, except that the Court of Claims determines the amount of damages, using the criteria set forth in the statute.

To suggest, as the State does, that the preliminary determination is in the nature of a civil action defies the clear intent and meaning of the statute. The Common Pleas Court makes the determination; but it is the Court of Claims which resolves the claim against the State of Ohio, having agreed to waive its immunity, consent to be sued, and pay damages to a wrongfully imprisoned individual.

This is a "special statutory proceeding," not an action in common law, and therefore, the Civil Rules do not apply. Also, the combination of R.C. 2743.48 and R.C.2305.02 cannot be construed to provide "general or specific reference" to the Civil Rules.<sup>2</sup> The fact that the burden of proof is one of preponderance of the evidence, and not beyond a reasonable doubt with respect to the determination of innocence, does not necessarily mean that one must commence an action with formalities of service, summons and pleading standards required by the Rules of Civil Procedure. Indeed, the construction of the Civil Rules states that they "shall be construed and applied to effect just results by eliminating delay, unnecessary expense and all other impediments to the expeditious administration of justice". Rule 1(B), Ohio Rules of Civil Procedure. In such

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<sup>2</sup> See Rule 1(C)(7) which excludes special statutory proceedings from the Rules.

a regard, the Common Pleas Court, under the original case number, and the Court that conducted the trial, is the logical forum to make the necessary determination.

It is this exact procedure which was followed in the case of Brian Piszczek who was wrongfully imprisoned for a rape he did not commit. The Trial Court granted a new trial and then entered a nolle prosequi as to the charges. The Trial Court also found that Mr. Piszczek was a wrongfully imprisoned individual. This was accomplished by way of a Motion for Determination of such status pursuant to the applicable statutes. (See attached Exhibit "A"). The State of Ohio, through the Cuyahoga County Prosecutor, did not object to this procedure. Clearly, the Trial Court is capable of making the determination in this manner, and is able to provide the parties with a meaningful hearing and an opportunity to present evidence, if necessary. Moreover, similar to any post-conviction proceeding, the Trial Court is able to allow discovery and set forth ground rules for resolving legal and factual issues that may arise.

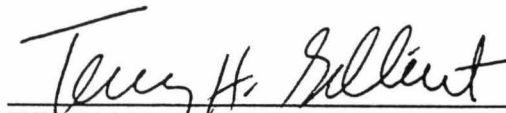
In the Piszczek case, the office of the Attorney General of Ohio acknowledged and consented to the determination made by the Common Pleas Court, and then went on to stipulate a settlement in the case. (See attached Exhibit "B"). Obviously, the Attorney General's office had no problem with this procedure - inasmuch as they are the ones who represent the State of Ohio on the ultimate issue of compensation, and have an interest in ensuring the statutory procedure is appropriately followed.

Practically speaking, to require a formal civil action would cause unnecessary delay and burden. Furthermore, in addition to the fact the statute does not require such cumbersome procedures, there is no good reason to proceed in such a manner. In

addition, case in this County has established a logical and simple protocol for handling these cases.

For all of the above reasons, the State's Motion to Strike and or Motion to Dismiss should be denied.

Respectfully submitted,



TERRY H. GILBERT (0021948)  
Attorney for Petitioner  
1700 Standard Building  
1370 Ontario Street  
Cleveland, OH 44113  
(216) 241-1430

**CERTIFICATE OF SERVICE**

A copy of the foregoing Petitioner's Brief in Opposition to Motion to Strike, or in the Alternative, Motion to Dismiss has been hand-delivered, this 8 day of January, 1996, to Marilyn Barkley Cassidy and Patrick J. Murphy, Assistant Prosecuting Attorneys, at their office, Justice Center, 1200 Ontario Street, Cleveland, Ohio 44113.



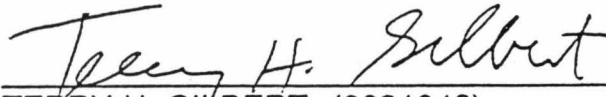
TERRY H. GILBERT  
Attorney for Petitioner

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

STATE OF OHIO	)	CASE NO. CR 257813
	)	
Plaintiff-Respondent	)	JUDGE STUART A. SAFERIN
	)	
-vs-	)	
	)	
BRIAN PISZCZEK	)	<u>MOTION FOR DETERMINATION THAT</u>
	)	<u>BRIAN PISZCZEK IS A WRONGFULLY</u>
	)	<u>IMPRISONED INDIVIDUAL PURSUANT</u>
Defendant-Petitioner	)	<u>TO SECTIONS 2305.02 AND 2743.48</u>
	)	<u>OF THE OHIO REVISED CODE</u>
	)	

Now comes Movant, Brian Piszczek, through counsel, and hereby moves this Court to enter an order of determination that the offenses for which he was found guilty, including all lesser included offenses, were not committed by him, to wit: the conviction of June 26, 1991 with respect to the offenses of rape, aggravated burglary, and felonious assault. In addition, the Court is hereby requested to make a finding that Brian Piszczek satisfies the definitions and conditions as set forth in Revised Code 2743.48(A) (1)-(4), and declare him to be a wrongfully imprisoned individual pursuant to Revised Code 2305.02.

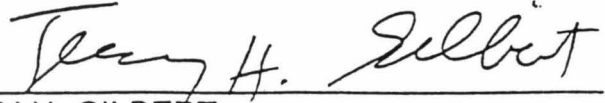
Respectfully submitted,



TERRY H. GILBERT (0021948)  
Attorney for Defendant-Petitioner  
1700 Standard Building  
1370 Ontario Street  
Cleveland, OH 44113  
(216) 241-1430

CERTIFICATE OF SERVICE

A copy of the foregoing has been hand-delivered, this 5<sup>th</sup> day of Oct, 1994, to Timothy Dobeck, Esq., Assistant Cuyahoga County Prosecutor, at his office, Justice Center, 1200 Ontario Street, Cleveland, Ohio 44113.



TERRY H. GILBERT  
Attorney for Defendant-Petitioner

## CASE NOTES AND OAG

1. (1980) Expert medical testimony is not required in every case to determine the extent of a person's injuries and pain and suffering; hence, a layman may testify regarding his pain and suffering where the damages are not so great as to require expert testimony: *Turner v. Barrett*, 68 OApp2d 80, 22 OO3d 74, 426 NE2d 1183.

2. (1986) A claim based on negligently performed blood grouping analysis related to a paternity suit is not a medical claim to which the restrictions on expert witnesses in Evid.R. 601(D) and RC § 2743.43(A) apply: *Price v. Cleveland Clinic Found.*, 33 OApp3d 301 515 NE2d 931.

3. (1986) The standards for expert witnesses in medical claims set forth in EvidR 601(D) and RC § 743.43(A) apply only to claims arising out of the diagnosis, care or treatment of any person, that is, to claims arising out of clinical assistance for a patient: *Price v. Cleveland Clinic Found.*, 33 OApp3d 301, 515 NE2d 931.

4. (1988) Where fields of medicine overlap and a given procedure may be performed by more than one type of specialist, a witness may be qualified as an expert in a malpractice action even though his practice is not in the same specialty as the defendant; the test is whether the expert will aid the trier of fact in the search for the truth, not whether the expert will be the best witness on the subject: *King v. LaKamp*, 50 OApp3d 84, 553 NE2d 701.

### § 2743.48 Civil action against state for wrongful imprisonment.

(A) As used in this section, a "wrongfully imprisoned individual" means an individual who satisfies each of the following:

(1) He 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) He 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 he was found guilty was an aggravated felony or felony.

(3) He was sentenced to an indefinite or definite term of imprisonment in a state penal or reformatory institution for the offense of which he 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 his sentencing and during or subsequent to his imprisonment, it was determined by a court of common pleas 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.

(B)(1) When a court of common pleas determines, on or after September 24, 1986, that a person is a wrongfully imprisoned individual, the court shall provide the person with a copy of this section and orally inform him and his attorney of his rights under this section to commence a civil action against the state in the court of claims because of his wrongful imprisonment and to be represented in that civil action by counsel of his own choice.

(2) The court described in division (B)(1) of this section shall notify the clerk of the court of claims, in writing and within seven days after the date of the entry of its determination that the person is a wrongfully imprisoned individual, of the name and proposed mailing address of the person and of the fact that the person has the rights to commence a civil action and to have legal representation as provided in this section. The clerk of the court of claims shall maintain in his office a list of wrongfully imprisoned individuals for whom notices are received under this section and shall create files in his office for each such individual.

(C)(1) In a civil action under this section, a wrongfully imprisoned individual has the right to have counsel of his own choice.

(2) If a wrongfully imprisoned individual who is the subject of a court determination as described in division (B)(1) of this section does not commence a civil action under this section within six months after the entry of that determination, the clerk of the court of claims shall send a letter to him, at the address set forth in the notice received from the court of common pleas pursuant to division (B)(2) of this section or to any later address provided by the wrongfully imprisoned individual, that reminds him of his rights under this section. Until the statute of limitations provided in division (H) of this section expires and unless the wrongfully imprisoned individual commences a civil action under this section, the clerk of the court of claims shall send a similar letter in a similar manner to him at least once each three months after the sending of the first reminder.

(D) Notwithstanding any provisions of this chapter to the contrary, a wrongfully imprisoned individual has and may file a civil action against the state, in the court of claims, to recover a sum of money as described in this section, because of his wrongful imprisonment. The court of claims shall have exclusive, original jurisdiction over such a civil action. The civil action shall proceed, be heard, and be determined as provided in sections 2743.01 to 2743.20 of the Revised Code, except that if a provision of this section conflicts with a provision in any of those sections, the provision in this section controls.



(E)(1) In a civil action as described in division (D) of this section, the complainant may establish that he is a wrongfully imprisoned individual by submitting to the court of claims a certified copy of the judgment entry of the court of common pleas associated with his conviction and sentencing, and a certified copy of the entry of the determination of a court of common pleas that he is a wrongfully imprisoned individual. No other evidence shall be required of the complainant to establish that he is a wrongfully imprisoned individual, and he shall be irrebuttably presumed to be a wrongfully imprisoned individual.

(2) In a civil action as described in division (D) of this section, upon presentation of requisite proof to the court, a wrongfully imprisoned individual is entitled to receive a sum of money that equals the total of each of the following amounts:

(a) The amount of any fine or court costs imposed and paid, and the reasonable attorney's fees and other expenses incurred by the wrongfully imprisoned individual in connection with all associated criminal proceedings and appeals, and, if applicable, in connection with obtaining his discharge from confinement in the state penal or reformatory institution;

(b) For each full year that he was imprisoned in the state penal or reformatory institution for the offense of which he was found guilty, twenty-five thousand dollars, and for each part of a year that he was so imprisoned, a pro-rated share of twenty-five thousand dollars;

(c) Any loss of wages, salary, or other earned income that directly resulted from his arrest, prosecution, conviction, and wrongful imprisonment.

(F)(1) If the court of claims determines in a civil action as described in division (D) of this section that the complainant is a wrongfully imprisoned individual, it shall enter judgment for the wrongfully imprisoned individual in the amount of the sum of money to which he is entitled under division (E)(2) of this section. In determining that sum, the court of claims shall not take into consideration any expenses incurred by the state or any of its political subdivisions in connection with the arrest, prosecution, and imprisonment of the wrongfully imprisoned individual, including, but not limited to, expenses for food, clothing, shelter, and medical services.

(2) If the wrongfully imprisoned individual was represented in the civil action under this section by counsel of his own choice, the court of claims shall include in the judgment entry referred to in division (F)(1) of this section an award for the reasonable attorney's fees of that counsel. These fees shall be paid as provided in division (C) of this section.

(3) The state consents to be sued by a wrongfully imprisoned individual because his imprisonment was wrongful, and to liability on its part because of that fact, only as provided in this section. However, this section does not affect any liability of the state

or of its employees to a wrongfully imprisoned individual on a claim for relief that is not based on the fact of his wrongful imprisonment, including, but not limited to, a claim for relief that arises out of circumstances occurring during his confinement in the state penal or reformatory institution.

(G) The clerk of the court of claims shall forward a certified copy of a judgment under division (F) of this section to the president of the controlling board. The board shall take all actions necessary to cause the payment of the judgment out of the emergency purposes special purpose account of the board.

(H) To be eligible to recover a sum of money as described in this section because of his wrongful imprisonment, a wrongfully imprisoned individual shall not have been, prior to September 24, 1986, the subject of an act of the general assembly that authorized an award of compensation for his wrongful imprisonment or have been the subject of an action before the former sundry claims board that resulted in an award of compensation for his wrongful imprisonment. Additionally, to be eligible to so recover, the wrongfully imprisoned individual shall commence a civil action under this section in the court of claims no later than two years after the date of the entry of the determination of a court of common pleas that he is a wrongfully imprisoned individual.

HISTORY: 141 v H 609 (Eff 9-24-86); 142 v H 623. Eff 3-17-89.

The provisions of § 3 of HB 623 (142 v—) read as follows:

SECTION 3. The amendments to section 2743.48 of the Revised Code that are made in Section 1 of this act do not apply to any person who, prior to the effective date of this act, has been determined by a court of common pleas to be a wrongfully imprisoned individual, as defined in division (A) of section 2743.48 of the Revised Code as it existed prior to the effective date of this act, and who, because of that determination, has the right to commence a civil action against the state in the court of claims to recover an amount of money as described in section 2743.48 of the Revised Code.

#### Cross-References to Related Sections

Determination by court of common pleas that an individual has been wrongfully imprisoned. RC § 2305.02.

#### Research Aids

Action against state for false imprisonment:  
O-Jur3d: False Imp & Mal Prac § 52.1

#### CASE NOTES AND OAG

1. (1985) A person who is acquitted by reason of self-defense may seek compensation for wrongful imprisonment under RC §§ 2305.02 and 2743.45: *Walden v. State*, 47 OS3d 47, 547 NE2d 962.

2. (1985) Revised Code § 2743.45, which authorizes a civil action for compensation for wrongful imprisonment, is not applicable to a period of imprisonment resulting from an incorrect revocation of probation: *Dragon State*, 48 OApp3d 72, 548 NE2d 246.

3. (1988) Revised Code § 2743.48(A)(1) to (4) define a "wrongfully imprisoned individual" as including a person charged by indictment with a felony, who is thereafter found guilty of such felony and sentenced to a term of imprisonment in a state penal institution, and who subsequently obtains a determination (pursuant to RC § 2305.02) by a court of common pleas that the offense of which he was found guilty "was not committed by him": *Cox v. State*, 50 OMisc2d 13, 552 NE2d 970 (CtC).

### § 2743.51 Definitions.

As used in sections 2743.51 to 2743.72 of the Revised Code:

(A) "Claimant" means both of the following categories of persons:

(1) Any of the following persons who claim an award of reparations under sections 2743.51 to 2743.72 of the Revised Code:

(a) A victim who was one of the following at the time of the criminally injurious conduct:

(i) A resident of the United States;

(ii) A resident of a foreign country the laws of which permit residents of this state to recover compensation as victims of offenses committed in that country;

(b) A dependent of a deceased victim who is described in division (A)(1)(a) of this section;

(c) A third person, other than a collateral source, who legally assumes or voluntarily pays the obligations of a victim, or of a dependent of a victim, who is described in division (A)(1)(a) of this section, which obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim and may include, but are not limited to, medical or burial expenses;

(d) A person who is authorized to act on behalf of any person who is described in division (A)(1)(a), (b), or (c) of this section.

(2) Any of the following persons who claim an award of reparations under sections 2743.51 to 2743.72 of the Revised Code:

(a) A victim who had a permanent place of residence within this state at the time of the criminally injurious conduct and who, at the time of the criminally injurious conduct, complied with any one of the following:

(i) Had a permanent place of employment in this state;

(ii) Was a member of the regular armed forces of the United States or of the United States coast guard or was a full-time member of the Ohio organized militia or of the United States army reserve, naval reserve, or air force reserve;

(iii) Was retired and receiving social security or any other retirement income;

(iv) Was sixty years of age or older;

(v) Was temporarily in another state for the purpose of receiving medical treatment;

(vi) Was temporarily in another state for the purpose of performing employment-related duties

required by an employer located within this state as an express condition of employment or employee benefits;

(vii) Was temporarily in another state for the purpose of receiving occupational, vocational, or other job-related training or instruction required by an employer located within this state as an express condition of employment or employee benefits;

(viii) Was a full-time student at an academic institution, college, or university located in another state;

(ix) Had not departed the geographical boundaries of this state for a period exceeding thirty days or with the intention of becoming a citizen of another state or establishing a permanent place of residence in another state;

(b) A dependent of a deceased victim who is described in division (A)(2)(a) of this section;

(c) A third person, other than a collateral source, who legally assumes or voluntarily pays the obligations of a victim, or of a dependent of a victim, who is described in division (A)(2)(a) of this section, which obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim and may include, but are not limited to, medical or burial expenses;

(d) A person who is authorized to act on behalf of any person who is described in division (A)(2)(a), (b), or (c) of this section.

(B) "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable that the victim or claimant has received, or that is readily available to him, from any of the following sources:

(1) The offender;

(2) The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under sections 2743.51 to 2743.72 of the Revised Code;

(3) Social security, medicare, and medicaid;

(4) State-required, temporary, nonoccupational disability insurance;

(5) Workers' compensation;

(6) Wage continuation programs of any employer;

(7) Proceeds of a contract of insurance payable to the victim for loss that he sustained because of the criminally injurious conduct;

(8) A contract providing prepaid hospital and other health care services, or benefits for disability;

(9) That portion of the proceeds of all contracts of insurance payable to the claimant on account of the death of the victim that exceeds fifty thousand dollars;

(10) Any compensation recovered or recoverable under the laws of another state, district, territory, or foreign country because the victim was the vic-

brought in either the court of claims or the court of common pleas: *Beasley v. Bd. of Trustees*, 4 OApp3d 1, 4 OBR 20, 446 NE2d 182.

3. (1984) Courts of common pleas are without jurisdiction to proceed in actions for declaratory or injunctive relief involving controversies under the environmental protection provisions of RC Chapter 3745.: *State ex rel. Maynard v. Whitfield*, 12 OS3d 49, 12 OBR 42, 465 NE2d 406.

4. (1984) After an action has been fully litigated in the domestic relations division of common pleas court and a judgment entry has been filed granting a divorce and providing for the division of property, the exclusive jurisdiction is terminated. At that point, there exists concurrent jurisdiction with the general division of common pleas court: *Price v. Price*, 16 OApp3d 93, 16 OBR 96, 474 NE2d 662.

5. (1984) Although sovereign immunity is no longer a viable defense, a court of common pleas has no jurisdiction over a suit against the state involving a claim which previously would have been barred by the doctrine of sovereign immunity since RC § 2743.03 vests in the Court of Claims exclusive, original jurisdiction over all such suits against the state: *Buerger v. Office of Public Defender*, 17 OApp3d 29, 17 OBR 82, 477 NE2d 1170.

6. (1985) An action against the state for negligence, where such a cause of action exists, may only be brought in the Court of Claims, not in a court of common pleas. RC § 2743.02(A): *Von Hoene v. State*, 20 OApp3d 363, 20 OBR 467, 466 NE2d 865.

7. (1985) An allegation that state officers or employees acted to cause plaintiff's injury "with malicious purpose, in bad faith or in a wanton or reckless manner" is sufficient to give the common pleas court jurisdiction over the named defendants and to state a claim upon which relief can be granted, and the complaint will survive a motion to dismiss filed under CivR 12(B)(2) and (B)(6). RC § 2743.02(A)(1) and (2): *Von Hoene v. State*, 20 OApp3d 363, 20 OBR 467, 466 NE2d 865.

8. (1986) Generally, Ohio's courts of common pleas have original jurisdiction over civil actions commenced against counties and their agencies. (Section 4, Article IV of the Ohio Constitution; RC § 2305.01.): *Burr v. Stark Cty. Bd. of Commrs.*, 23 OS3d 69, 23 OBR 200, 491 NE2d 1101.

9. (1985) In the context of RC § 2743.02(A)(1), "the court" means the Court of Claims. Thus, where a plaintiff has simultaneous actions pending in a court of common pleas and the Court of Claims against a state defendant and several state employees, the court of common pleas must defer to a ruling by the Court of Claims as to whether the employees acted "with malicious purpose, in bad faith, or in a wanton or reckless manner." *McIntosh v. Univ. of Cincinnati*, 24 OApp3d 116, 24 OBR 157, 493 NE2d 321.

10. (1987) A court of common pleas does not lack jurisdiction over an action against state officers or employees merely because the Court of Claims has not first determined that the act or omission, which is the subject of the action, was manifestly outside the scope of the officer's or employee's office or employment, or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner, unless the aggrieved party has filed a suit in the Court of Claims based on the same act or omission: *Cooperman v. Univ. Surgical Assoc.*, 32 OS3d 191, 513 NE2d 255.

11. (1987) Pursuant to RC §§ 3335.03 and 2743.02(A)(1), an action in contract may be brought against the Board of Trustees of the Ohio State University in the court of common pleas: *Schwarz v. Bd. of Trustees of Ohio State Univ.*, 31 OS3d 267, 31 OBR 493, 510 NE2d 808.

12. (1987) The courts of common pleas possess jurisdiction to entertain federal claims seeking prospective injunctive relief brought under Section 1983, Title 42, U.S. Code, against individual state officers in their official capacities, in order to redress alleged deprivations of rights, privileges or immunities guaranteed by the United States Constitution: *Schwarz v. Bd. of Trustees of Ohio State Univ.*, 31 OS3d 267, 31 OBR 493, 510 NE2d 808.

13. (1988) A court of common pleas has no jurisdiction to consider a post-judgment motion requesting a court order directing the payment of attorney fees, where such motion is filed by a non-party and where the complaint contains no cause of action for attorney fees. Since such jurisdiction does not exist, it may not be "reserved" by the court in its final judgment: *Seven Hills v. Cleveland*, 47 OApp3d 159, \_\_\_ NE2d \_\_\_.

### § 2305.02 Determination of wrongful imprisonment claim.

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.

HISTORY: 141 v H 609 (Eff 9-24-86); 142 v H 623. Eff 3-17-89.

Not analogous to former RC § 2305.02 (RS § 467-1; 90 v 301; GC § 11216; Bureau of Code Revision, 10-1-53), repealed 133 v H 1201, § 1, eff 7-1-71.

### CASE NOTES AND OAC

1. (1989) In a proceeding under RC § 2305.02, the claimant bears the burden of proving his innocence by a preponderance of the evidence: *Walden v. State*, 47 OApp3d 47, \_\_\_ NE2d \_\_\_.

2. (1989) A person who is acquitted by reason of self-defense may seek compensation for wrongful imprisonment under RC §§ 2305.02 and 2743.48: *Walden v. State*, 47 OApp3d 47, \_\_\_ NE2d \_\_\_.

3. (1989) Where a person claiming compensation for wrongful imprisonment has presented an affirmative defense of self-defense at his criminal trial, and has obtained a judgment of acquittal, that judgment is not to be given preclusive effect in a proceeding under RC § 2305.02: *Walden v. State*, 47 OApp3d 47, \_\_\_ NE2d \_\_\_.

### § 2305.03 Lapse of time a bar.

ALR

Limitation of actions: invasion of right of privacy. 33 ALR4th 479.

FILED  
1 JUN 19 1995  
COURT OF CLAIMS OF OHIO

IN THE COURT OF CLAIMS OF OHIO

BRIAN PISZCZEK, :  
Plaintiff, :  
v. : Case No. 94-13055WI  
STATE OF OHIO, :  
Defendant. :

JOURNAL ENTRY

Judgment is hereby entered in favor of Plaintiff, Brian Piszczek and against Defendant, State of Ohio in the amount of \$105,000.00.

FINDINGS OF FACT

1. On June 26, 1991, Plaintiff, Brian Piszczek was convicted of rape, felonious assault and aggravated burglary in the Court of Common Pleas of Cuyahoga County.

2. The court sentenced him as follows:

It is ordered by the Court the Defendant, Brian J. Piszczek, is sentenced Lorain Correctional Institution 15-25 years Count 3, minimum term to be served as actual incarceration; Court further finds cts 1 and 3 merge for sentencing, sentenced 12-15 years on ct 2, minimum term to be served as term of actual incarceration, concurrent and consecutive to probation in violation of CR 244753.

3. On September 13, 1994, Plaintiff filed a motion for a new trial with the trial court based upon the results of DNA forensic testing which excluded him as a donor of the fluids obtained from the alleged victim, thereby excluding him as the offender with respect to these convictions.

FILED JUN 19 1995  
*Julie Wagner-Rucker*

CIVIL ACTIONS  
JOURNAL

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JUN 19 1995

OFFICE OF CLAIMS OF OHIO

Case No. 94-13055WI

Journal Entry

4. The court granted the motion for a new trial, without objection, and on October 6, 1994, the court entered a nolle prosequi as to all charges in the indictment.

5. Further, the Cuyahoga County Court of Common Pleas found Plaintiff to have been a wrongfully imprisoned individual pursuant to R.C. 2305.02 and 2743.48. (A copy of the entry is attached hereto and marked as Exhibit A.)

6. Plaintiff was imprisoned for three years and 183 days.

7. He suffered economic loss in the amount of \$8,591.33.

8. Plaintiff incurred costs of defending the criminal charges in the amount of \$3,875.00.

9. Plaintiff incurred attorney fee costs for his defense and his wrongful imprisonment determination in the amount of \$5,000.00.

CONCLUSIONS OF LAW

1. R.C. 2743.48(A)(1)-(5) sets forth the test for determination of "wrongful imprisoned". Piszczek meets each criteria. Piszczek was charged with a felony, was found guilty, and sentenced for such charges, was released from imprisonment on basis (nolle prosequi) which makes the criminal proceedings against him final, and has obtained a de novo determination by a court of common pleas that the charges upon which his original convictions were based and all lesser included offenses were "not committed by

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COURT OF CLAIMS OF OHIO

Case No. 94-13055WI

Journal Entry

him". Pursuant to R.C. 2743.48(E)(1), when a person has obtained a determination by a common pleas court, the person may commence an action in the Court of Claims, in which "[N]o other evidence shall be required of the complainant to establish that he is a wrongfully imprisoned individual, and he shall irrebuttably presumed to be a wrongfully imprisoned individual." This court accepts the common pleas court's judgment and declares Piszczek to be a wrongfully imprisoned individual.

2. Pursuant to R.C. 2743.48(E)(2)(a)-(c), and 2743.48(F)(2), Plaintiff is entitled to \$25,000.00 per year for imprisonment, plus a pro rata share of any year; fines, court costs, costs and reasonable attorney's fees incurred in defense of the criminal charges against him and in obtaining his release, loss of wages, salary or other earned income that directly resulted from his arrest, prosecution, conviction, and wrongful imprisonment, and reasonable attorney's fees for obtaining of the declaration of wrongful imprisonment by this Court.

3. Based upon the findings of fact, the Court enters the following judgment:

- a. \$87,533.67 for imprisonment of three years and 183 days;
- b. Costs of \$3,875.00;
- c. Economic loss of \$8,591.33; and
- d. Reasonable attorney's fees of \$5,000.00.

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Case No. 94-13055WI

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4. R.C. 2743.48(G) provides:

The Clerk of the Court of Claims shall forward a certified copy of a judgment under division of F of R.C. 2743.48 to the president of the Controlling Board. The Board shall take all actions necessary to cause the payment of the judgment out of the emergency purposes special purposes account of the Board.

5. The Clerk is hereby ordered to certify a copy of this judgment in the total amount of \$105,000.00 to the president of the Controlling Board. Interest on the judgment shall be allowed per R.C. 2743.19.

6. The warrant of payment of judgment shall be sent to Plaintiff, Brian Piszczek through the office of his attorney, Terry H. Gilbert, 1700 Standard Building, 1370 Ontario Street, Cleveland, OH 44113.

7. The Court will absorb costs of this action.

6-19-95.  
 DATE

*[Handwritten Signature]*  
 JUDGE

cc:

Terry H. Gilbert, Esq.  
 1700 Standard Bldg.  
 1370 Ontario Street  
 Cleveland, OH 44113  
 Counsel for Plaintiff

Teri Jo Finfrock  
 Assistant Attorney General  
 Court of Claims Defense  
 65 East State Street  
 Suite 1630  
 Columbus, OH 43215-4220  
 Counsel for Defendant

**JOURNALLED** JUN 19 1995  
 BY *[Handwritten Signature]*

CIVIL ACTIONS  
 JOURNAL

**FILED**  
1 JUN 19 1995  
COURT OF CLAIMS OF OHIO

STATE OF OHIO,  
CUYAHOGA COUNTY

SS.

IN THE COURT OF COMMON PLEAS

STATE OF OHIO

PLAINTIFF

BRIAN J PISZCZEK

DEFENDANT

JOURNAL ENTRY

TO-WIT: JUNE 26 MAY TERM, 19 91  
NO. CR-257813 , 19 91

INDICTMENT RAPE W/SPECS, FEL. ASSLT  
W/SPECS, AGGR BURGLARY W/SPECS

RECEIVED FOR FILING

JUL 3 1991

GERALD E. FUERST, CLERK  
BY *[Signature]* DEP.

THIS DAY AGAIN COMES THE PROSECUTING ATTORNEY AND DEFENDANT, BRIAN J. PISZCZEK, IN OPEN COURT, WITH COUNSEL, WHEREUPON, JURY HAVING HEARD ALL TESTIMONY ADDUCED, ARGUMENTS OF COUNSEL; CHARGE OF COURT RETIRED TO THEIR ROOM IN CHARGE OF BAILIFF TO DELIBERATE, NOW COMES THE JURY, CONDUCTED INTO COURT BY BAILIFF AND RETURNED FOLLOWING VERDICT IN WRITING, TO-WIT: "WE, THE JURY BEING DULY IMPANELED AND SWORN, FIND THE DEFENDANT, BRIAN J. PISZCZEK, GUILTY OF RAPE RC 2907.02 W/SPECIFICATIONS COUNT ONE", "WE THE JURY FIND THE DEFENDANT GUILTY OF FELONIOUS ASSAULT RC 2903.11 W/SPECS AS CHARGED COUNT TWO" AND "WE THE JURY FIND THE DEFENDANT GUILTY OF AGGRAVATED BURGLARY W/SPECS RC 2911.11 AS CHARGED IN COUNT THREE", DEFENDANT STIPULATES TO PRIOR AGGRAVATED FELONY CONVICTION IN CASE CR 244753.

DEFENDANT INFORMED OF THE JURY'S VERDICT AND INQUIRED OF IF HE HAD ANYTHING TO SAY AND HE HAVING NOTHING BUT WHAT HE HAD ALREADY SAID AND SHOWING NO GOOD AND SUFFICIENT CAUSE WHY JUDGMENT SHOULD NOT BE PRONOUNCED: IT IS ORDERED BY THE COURT THAT DEFENDANT, BRIAN J. PISZCZEK, IS SENTENCED LORAIN CORRECTIONAL INSTITUTION 15 TO 25 YEARS COUNT 3, MINIMUM TERM TO BE SERVED AS ACTUAL INCARCERATION; COURT FURTHER FINDS CTS 1 AND 3 MERGE FOR SENTENCING, SENTENCED 12 TO 15 YEARS ON CT. 2, MINIMUM TERM TO BE SERVED AS TERM OF ACTUAL INCARCERATION, CONCURRENT BUT CONSECUTIVE TO PROBATION VIOLATION IN CR 244753. ADVISED OF RIGHTS CR 32 A 2, TRANSCRIPT ORDERED, COUNSEL TO BE ASSIGNED.

JUDGE *[Signature]*  
ROBERT E FEIGHAN

MB : 06/27/91 16:09 VOL 1030 PG 583

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Case No. 94-13055-WI

EXHIBIT A

CIVIL ACTIONS  
JOURNAL

VOL. 443 PAGE 140

FILED JUN 19 1995

*[Signature]*  
BY *[Signature]*



STATE OF OHIO, }  
CUYAHOGA COUNTY } SS.

IN THE COURT OF COMMON PLEAS

SEPTEMBER TERM, 19 94

TO-WIT: OCTOBER 06, 19 94  
NO. CR-257813

STATE OF OHIO

PLAINTIFF

vs.

INDICTMENT RAPE W/SPECS. FEL. ASSLT  
W/SPECS. AGGR BURGLARY W/SPECS

BRIAN J PISZCZEK

DEFENDANT

JOURNAL ENTRY

THIS DAY CAME THE PROSECUTING ATTORNEY ON BEHALF OF THE STATE OF OHIO, AND WITH LEAVE OF COURT, AND ON GOOD CAUSE SHOWN, ENTERED A NOLLE PROSEQUI ON THE ABOVE INDICTMENT. DEFENDANT'S MOTION FOR DETERMINATION THAT BRIAN PISZCZEK IS A WRONGFULLY IMPRISONED INDIVIDUAL PURSUANT TO SECTIONS 2305.02 AND 2743.48 OF ORC IS GRANTED.

**FILED**  
OCT 12 1994  
GERALD E. FUERST  
CLERK OF COURTS  
CUYAHOGA COUNTY, OHIO

VOL 1340 PGO 164

JUDGE

*Stuart A. Saferin*

STUART A SAFERIN

LRT 10/11/94 11:39

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Sheriff \_\_\_\_\_  Other \_\_\_\_\_  
 Defendant \_\_\_\_\_

**FILED**  
1 JUN 19 1995  
COURT OF CLAIMS OF OHIO

CIVIL ACTIONS  
JOURNAL

VOL. 443 PAGE 141

**JOURNALIZED** JUN 19 1995

BY *Julie Nague-Rucker*

THE STATE OF OHIO }  
Cuyahoga County } SS. I, GERALD E. FUERST, CLERK OF  
THE COURT OF COMMON PLEAS  
WITHIN AND FOR SAID COUNTY.  
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY  
TAKEN AND COPIED FROM THE ORIGINAL CR-257813  
*Saferin*  
NOW ON FILE IN MY OFFICE  
WITNESS BY HAND AND SEAL OF SAID COURT THIS 28  
DAY OF Oct A.D. 1994  
GERALD E. FUERST, Clerk  
By *[Signature]* Deputy

IN THE COURT OF CLAIMS OF OHIO

**FILED**  
1 JUN 19 1995  
COURT OF CLAIMS OF OHIO

BRIAN PISZCZEK,

:

Plaintiff,

:

v.

:

Case No. 94-13055WI

STATE OF OHIO,

:

Defendant.

:

STIPULATION

The parties hereby stipulate to the following:

1. In 1994, the Cuyahoga County Court of Common Pleas found Plaintiff to have been a wrongfully imprisoned individual pursuant to R.C. 2743.48 and 2305.02. Said judgment is final;

2. Plaintiff was imprisoned for three years and 183 days;

3. Plaintiff suffered economic loss in the amount of \$8,591.33;

4. Plaintiff incurred attorney fee costs for his defense and his wrongful imprisonment determination in the amount of \$5,000.00;

5. Plaintiff incurred costs of defending the criminal charges against him in the amount of \$3,875.00;

6. Based upon this Stipulation, Plaintiff is owed \$105,000.00 as a result of the declaration of wrongful imprisonment; and

7. Neither party will appeal a judgment in such amount and each party waives any right of appeal, allowing immediate certification of a judgment, pursuant to R.C. 2743.48 (G).

**JOURNALLED** JUN 19 1995

EXHIBIT B

BY Julie Wagner-Rieker

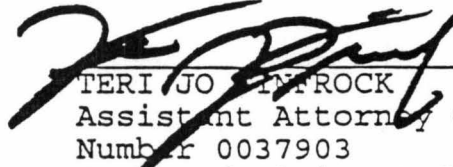
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JOURNAL

Case No. 94-13055-WI

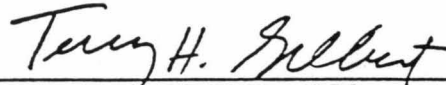
Respectfully submitted, 1 JUN 19 1995

BETTY D. MONTGOMERY  
Attorney General of Ohio

COURT OF CLAIMS OF OH



TERI JO CIMROCK  
Assistant Attorney General  
Number 0037903  
Court of Claims Defense  
65 East State Street  
Suite 1630  
Columbus, Ohio 43215-4220  
(614) 466-7447  
COUNSEL FOR DEFENDANT

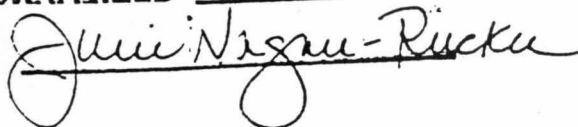


TERRY H. GILBERT, ESQ.  
1700 Standard Bldg.  
1370 Ontario Street  
Cleveland, OH 44113  
COUNSEL FOR PLAINTIFF

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JUN 19 1995

BY



CIVIL ACTIONS  
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