



STATE OF ARKANSAS
BUREAU OF
LEGISLATIVE RESEARCH

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Matthew Miller, Assistant Director
for Legal Services
Richard Wilson, Assistant Director
for Research Services

TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Aaron Free v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: April 17, 2014
Date of Claim Filed: July 14, 2016
Amount Claimed: \$15,000.00
Amount Awarded: N/A
Claimant's Representative: N/A
Respondent's Representative: Thomas Burns

Allegations of Claimant: The inmate was attacked by another inmate with a homemade knife and chased around the unit where his attack was witnessed by ADC personnel, who initially did nothing to stop the attack. Once the attack was stopped the inmate was taken to the infirmary to see to his wounds. However, the inmate was ultimately disciplined for fighting. The inmate alleges that the Varner Unit has a history of violent incidents such as the one in which the inmate was involved and the inmate is now seeking damages for past, present, and future physical, mental, and emotional injury, as well as financial injury stemming from his attacks.

Agency Response: The agency moved to dismiss arguing that the inmate has failed to state facts upon which relief may be granted as well as for failure of the inmate to exhaust all available remedies. Specifically, the inmate waited until December 25, 2015, to file a grievance associated with the claim and failed to exhaust the grievance process, which is a condition precedent to filing a claim with the Claims Commission. Further, the inmate was charged with assault and failure to obey an order of the staff stemming from this incident, and was found guilty of both of the charges. Notably, the inmate did not appeal this finding to the warden.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss due to the reasons given in the motion.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Andre McEwing v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: March, 2014; January, 2016; April, 2016

Date of Claim Filed: June 28, 2016

Amount Claimed: \$2,500.00

Amount Awarded: N/A

Claimant's Representative: N/A

Respondent's Representative: Thomas Burns

Allegations of Claimant: On one occasion in March of 2014 and on one occasion in January of 2016, the inmate possessed a large number of items that were confiscated. Those items included magazines, books, and photographs, as well as two radios. The inmate later learned that those confiscated items were not mailed home to his family nor were they sent along with him to a new unit when he was transferred. The inmate now alleges that those confiscated items should have been sent to the unit to which he was transferred if the items had not already been sent to his family. The failure to do this was in violation of ADC policy and now the inmate seeks damages for loss of property and failure to follow procedure.

Agency Response: The agency moved to dismiss arguing that the inmate has failed to state facts upon which relief may be granted. Specifically, the confiscated items were considered contraband and contraband cannot be sent to his family, as it is required to be destroyed per agency policy. As such the inmate's case should be dismissed.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss due to the reasons given in the motion.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Dexter Harmon v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: January 8, 2016
Date of Claim Filed: May 20, 2016
Amount Claimed: \$9,999.00
Amount Awarded: N/A
Claimant's Representative: N/A
Respondent's Representative: Thomas Burns

Allegations of Claimant: The inmate received a check in the amount of \$7,200.00 as the result of a settlement with Phillips County. The ADC sent the inmate a copy of the check, never telling him that they had confiscated the original check. The inmate contends he did not give the ADC permission to cash the check or deposit it in his inmate account. Instead, the inmate wanted to send the check to his legal representative. As such, the inmate argues that the ADC committed trespass and conversion, and failed to follow procedure. He now seeks damages.

Agency Response: The agency moved to dismiss arguing that the inmate has failed to state facts upon which relief may be granted. Specifically, the inmate was in receipt of a settlement check resulting from a case captioned *Covington v. Wallace* filed in federal court against the Phillips County Jail. Ark. Code Ann. § 12-29-601 et seq. provides that an award of this nature shall first be paid to satisfy any outstanding restitution and that any amount after that payment is forwarded to the prisoner. The check was therefore deposited in the inmate's account, per ADC policy. Any liens on his account were paid and the rest was left in the account. The inmate made several purchases before his account was drawn down to zero due to an action filed in Pulaski County Circuit Court under § 12-29-501 et seq. (see below).

Abeyance and Opinion of the Claims Commission: The Commission held the claim in abeyance pending an explanation by the ADC regarding the last transaction of \$4,418.73. This transaction, listed in documentation provided by the ADC, drew the inmate's account down to zero. However, there was a question regarding where the funds in that transaction went. The ADC stated that this amount was removed from the inmate's account and held in trust by the circuit court under § 12-29-501 et seq., which permits for the payment of the daily costs of housing and room and board for an inmate in the ADC

if the inmate becomes possessed of any estate while the inmate is in the ADC. After a hearing, the circuit court ordered the ADC to pay the \$4,418.73 to the State from the inmate's funds under § 12-29-501 et seq. A copy of the circuit court order was attached to the agency response, which is included in the case packet.

After the explanation of the \$4,418.73 transaction and the circuit court's order, the commission revisited ADC's motion to dismiss and granted the agency's motion for the reasons given in the motion.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Eric Murry v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: April 9, 2016
Date of Claim Filed: June 28, 2016
Amount Claimed: \$10,000.00
Amount Awarded: N/A
Claimant's Representative: N/A
Respondent's Representative: Thomas Burns

Allegations of Claimant: The inmate argued that two ADC guards sprayed him in the face with bursts of "MK 41.3%" after he was restrained in handcuffs. The inmate was then taken to the medical department to be treated and to have his eyes cleaned. The inmate also alleges he suffered chemical burns to the face and that the officers were "malicious and sadistic" and sprayed him "out of pure evil to hurt [him], to inflict pain upon [him] for their [own] pleasure." Because of this, the inmate alleges pain and suffering and mental anguish. He now seeks damages.

Agency Response: The agency moved to dismiss arguing that the inmate has failed to state facts upon which relief may be granted, that the federal courts have preempted this issue, that this is an alleged constitutional violation, and that the commission lacks jurisdiction to hear this case. Specifically, the inmate has alleged excessive force, which is considered a federal constitutional right protected under the Eighth Amendment. Because of this, the commission lacks jurisdiction to hear this case. If, instead, the inmate alleges negligence, this issue is preempted under the Supremacy Clause of the United States Constitution. Moreover, the facts of the case would show that the inmate was sprayed while he was being restrained after assaulting an ADC officer. There would be no testimony that he was sprayed while restrained in handcuffs. However, even if that were the case, it does not mean that the spraying constituted excessive force.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss due to the reasons given in the motion.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
George Rhoades v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: March 30, 2016
Date of Claim Filed: August 31, 2016
Amount Claimed: \$939.05
Amount Awarded: N/A
Claimant's Representative: N/A
Respondent's Representative: Thomas Burns

Allegations of Claimant: The inmate possessed an MP3/media player that he purchased through the commissary that was confiscated by ADC personnel. He was written a disciplinary violation but was found not guilty of anything "in connection with the player." All contents of the player were purchased/approved through the proper channels and within ADC policy. The ADC is keeping the player from the inmate as an arbitrary punishment.

Agency Response: The agency moved to dismiss arguing that the inmate has failed to state facts upon which relief may be granted. The media player was confiscated due to an investigation into the inmate's involvement in downloading pornographic materials depicting children from the internet. The investigation by the Arkansas State Police is still ongoing and the media player is part of that investigation. As such, the inmate has no right to the media player at this time and the claim should be dismissed.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss due to the reasons given in the motion.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Johnny Evans v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: December 18, 2014
Date of Claim Filed: December 28, 2015
Amount Claimed: \$1,000.00
Amount Awarded: N/A
Claimant's Representative: N/A
Respondent's Representative: Thomas Burns

Allegations of Claimant: The inmate was transferred from Varner Unit to Bowie County, TX, in December of 2014 due to federal charges. Before he was transferred, he inventoried and stored his personal belongings. When he returned to Varner Unit in June of 2015, his personal belongings were no longer there. During this time the ADC lost his property, including a radio, shoes, clothing, pictures and certain canteen/commissary items. The inmate now seeks reimbursement for this loss of property and failure to follow procedure.

Agency Response: The agency moved to dismiss arguing that the inmate has failed to show facts upon which relief may be granted. After that motion was denied, the agency filed a motion for summary judgment that argued that the inmate is responsible for packing up his belongings when he is transferred to another unit, which he failed to do. Further, some items, such as the radio and two Bibles were in the inmate's possession when he was inventoried in February of 2016 although he did not purchase those items in the interim. The inmate admitted to trafficking and trading a radio upon his return. Further, the inmate's shoes would have been secured had he inventoried them prior to his transfer. It is very possible that the shoes were actually on the inmate's feet when he left Varner Unit and therefore were not inventoried for that reason. The agency has offered to replace the shoes but the inmate has refused. Regarding the missing photos, records show that the inmate only had four of them and agency policy fixes a maximum reimbursement of \$2.50 per picture. Because of this, the inmate cannot prevail on this claim.

Opinion of the Claims Commission: The Commission considered the motion for summary judgment and the inmate's response and found that the inmate failed to pack up

his property and bring it to the property room. As such, the Commission granted the motion and denied and dismissed the claim.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Kevin Linn v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: March 3, 2015
Date of Claim Filed: June 14, 2016
Amount Claimed: \$3,500.00
Amount Awarded: N/A
Claimant's Representative: N/A
Respondent's Representative: Thomas Burns

Allegations of Claimant: The inmate was charged with violating an ADC rule and given a disciplinary hearing. However, the ADC officer charged with administering the hearing waived the inmate's right to a hearing against the inmate's will. The ADC officer did so without justification and with hostility toward the inmate. As a result, the inmate never got to give his side of the story and was sentenced to thirty (30) days punitive isolation with an additional sixty (60) days of privilege restrictions. Because the ADC failed to give the inmate a fair and impartial hearing, he now seeks damages for personal injury and failure to follow procedure.

Agency Response: The agency moved to dismiss arguing lack of jurisdiction over the subject matter as well as failure to state a claim upon which relief may be granted. Specifically, the inmate has failed to attach the disciplinary to the complaint as required by the commission's own rules. This requirement is mandatory. The inmate has also failed to state why he has not attached the required documentation. Further, the inmate is arguing that he was denied procedural due process, which is outside the jurisdiction of the Commission. Moreover, the inmate cannot bring a claim for damages for a properly assessed and upheld disciplinary.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss due to the reasons given in the motion.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Laveris Townsend v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: May 13, 2015, through September 28, 2015
Date of Claim Filed: May 9, 2016
Amount Claimed: \$5,000.00
Amount Awarded: N/A
Claimant's Representative: N/A
Respondent's Representative: Thomas Burns

Allegations of Claimant: The inmate argues that he was subjected to a disciplinary hearing and punishment that did not properly follow ADC procedure. Specifically, the inmate contends that the disciplinary form was not signed or dated before the disciplinary was served to him, among other irregularities. Because of the failure to properly follow procedure, the inmate now seeks damages.

Agency Response: The agency moved to dismiss arguing that the inmate has failed to state facts upon which relief may be granted. Specifically, the inmate failed to fully exhaust his administrative remedies by failing to fully appeal his disciplinary to the final level. Because of this, per ADC policy he may not now pursue this claim in the Claims Commission. Further, the inmate has stated no facts that support his claim that ADC personnel "did something" with his appeal. His conclusory allegations are insufficient.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss due to the inmate's failure to exhaust all remedies under the grievance process. The Commission likewise denied the inmate's motion for reconsideration.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Malichi Muhammad v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: November 23, 2015
Date of Claim Filed: March 3, 2016
Amount Claimed: \$263.81
Amount Awarded: N/A
Claimant's Representative: N/A
Respondent's Representative: Thomas Burns

Allegations of Claimant: The inmate argued that his cell was the subject of a shakedown by ADC personnel while he was in the law library and that afterward he had several items of personal property missing. Specifically, he was missing a radio, an MP3 player, earbuds, books, two pairs of shoes, and clothing. He now seeks damages for loss of his personal property.

Agency Response: The agency moved to dismiss arguing that the inmate has failed to state facts upon which relief may be granted. Specifically, videotape surveillance of his bunk area revealed that no shakedown occurred during the time he alleged and the inmate admits that he relied on other inmates telling him that his cell was shaken down. Further, the inmate did not keep his allegedly stolen items in his lockbox. Moreover, the inmate seeks compensation for contraband he admits to possessing. Specifically, inmates are not allowed to possess both a radio and an MP3 player or possess more than one (1) pair of shoes.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss due to the reasons given in the motion. The Commission likewise denied the inmate's motion for reconsideration.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Marion Riddell v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: September 4, 2015
Date of Claim Filed: May 16, 2016
Amount Claimed: \$2,500.00
Amount Awarded: N/A
Claimant's Representative: N/A
Respondent's Representative: Thomas Burns

Allegations of Claimant: The inmate was admitted to the hospital due to a heart attack and to install a defibrillator in his chest. After being discharged from the hospital the inmate was taken to the captain's office where he was told all his personal property had been stolen. The inmate contends that it was ADC's responsibility to collect his personal belongings due to his being taken to the hospital. He now seeks reimbursement for the loss of his personal property.

Agency Response: The agency moved to dismiss arguing that the inmate has failed to state facts upon which relief may be granted. The agency admits that the inmate was taken to the hospital due to chest pains while walking down the hall carrying laundry. However, the inmate has failed to show how the ADC is responsible for the theft of his property. Inmates are provided a locked locker box to secure personal property. Inmates are advised at all times to have their property secured when they leave the barracks. If the inmate's personal property was stolen it was because he failed to lock his lock box before he left the barracks or because of a criminal act of another inmate. In either case, the ADC is not responsible.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss due to the fault of the inmate to put his property in his locker box.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Mark Williams v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: October 15, 2015
Date of Claim Filed: March 16, 2016
Amount Claimed: \$5,500.00
Amount Awarded: N/A
Claimant's Representative: N/A
Respondent's Representative: Thomas Burns

Allegations of Claimant: The inmate alleges he was falsely accused of indecent exposure and written up for a disciplinary violation, which was later reversed. Further, ADC personnel falsified documents relating to this case. He now seeks damages for failure to follow procedure, mental anguish, negligence, and pain and suffering.

Agency Response: The agency moved to dismiss arguing that the inmate never disputed the underlying facts concerning his indecent exposure and that his disciplinary was reversed due to the misstatement of date of occurrence on the copy of the disciplinary. However, this does not mean that the conduct did not occur. Further, the inmate has failed to state the elements of a claim for infliction of mental anguish and has failed to show facts necessary to prove negligence by the agency. Last, the inmate has failed to show any pain and suffering he may have suffered. The inmate has a lengthy history of not only indecent exposure violations, but disciplinary violations in general. The disciplinary process is not foreign to him.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss due to the inmate's failure to respond to the motion. The inmate's motion for reconsideration was also denied.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Patrick Sherman v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: "2013-2016"
Date of Claim Filed: May 25, 2016
Amount Claimed: \$45,000.00
Amount Awarded: N/A
Claimant's Representative: N/A
Respondent's Representative: Thomas Burns

Allegations of Claimant: The inmate brings a claim alleging that the ADC has failed to follow procedure. The inmate has three separate claims, all alleging that the ADC failed to properly calculate his class status and the application of meritorious good time. Calculation of an inmate's class status and the application of meritorious good time directly affects the inmate's ability to become eligible for parole.

Agency Response: The agency moved to dismiss arguing that the inmate has failed to state facts upon which relief may be granted. Specifically, the Claims Commission does not have jurisdiction to hear cases involving class status computation or regarding the calculation of an inmate's sentence. The inmate instead should pursue claims of this nature through a petition for writ of habeas corpus.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss due to the Commission's lack of jurisdiction to hear claims regarding the calculation of an inmate's sentence. The Commission likewise denied the inmate's motion for reconsideration.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Robert Cooper v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: September 28, 2015
Date of Claim Filed: April 18, 2016
Amount Claimed: \$75.00
Amount Awarded: N/A
Claimant's Representative: N/A
Respondent's Representative: Thomas Burns

Allegations of Claimant: The inmate alleges that ADC personnel confiscated thirteen (13) photos from him. He was given instructions on how to have the photos mailed to his daughter. However, the ADC officer that confiscated the photos says he did not, in fact, confiscate the photos and the photos were not mailed to the inmate's daughter. The inmate has proof that the photos were confiscated and now seeks damages of the loss of his property.

Agency Response: The agency moved to dismiss arguing that the photos in question were located and mailed to the inmate's daughter. The inmate's daughter has acknowledged receipt of the photos. The case should be dismissed because the matter has been resolved.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss due to the inmate's failure to respond to the motion and the fact that the inmate's photos were found. A motion for reconsideration was also denied.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Robert Cooper v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: September 28, 2015
Date of Claim Filed: May 2, 2016
Amount Claimed: \$200.00
Amount Awarded: N/A
Claimant's Representative: N/A
Respondent's Representative: Thomas Burns

Allegations of Claimant: The inmate's personal property was confiscated due to a disciplinary violation for which he was later found not guilty. The inmate was sentenced to isolation for another disciplinary violation and when he returned from isolation he requested that his personal property be returned to him. The personal property in question included personal hygiene products, batteries, plastic bowls, envelopes, clothing, coffee cups, headphones, and earbuds. However, his personal property was not returned to him and he attempted to use the grievance process to get his property back or reimbursement for the property. This was unsuccessful and he now seeks damages for the loss of his personal property.

Agency Response: The agency moved to dismiss arguing that the inmate has failed to exhaust his available remedies, specifically his grievance process. The inmate's disciplinary violation was dismissed due to an "invalid extension form," which resulted in a finding of not guilty that was not based on the merits of the case. The grievance he filed for the return of his personal property was untimely. Because the inmate failed to exhaust the available grievance process, he cannot now bring the instant case. Moreover, excess property is contraband and the inmate is not eligible to have contraband returned to him nor is it necessary to write a disciplinary violation in order to confiscate contraband. As such, the inmates case should be dismissed.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss due to the inmate's failure to respond to the motion and for the inmate's failure to exhaust his available remedies. The Commission likewise denied the inmate's motion for reconsideration.



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TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
Willie Davis, Jr. v. Department of Correction
Denied and dismissed claim/Appealed by Claimant

Date of Occurrence: February 10, 2015
Date of Claim Filed: January 4, 2016
Amount Claimed: \$6,000.00
Amount Awarded: N/A
Claimant's Representative: N/A
Respondent's Representative: Thomas Burns

Allegations of Claimant: The inmate obtained an order from the Arkansas Supreme Court under the Freedom of Information Act that the State Crime Lab release to him the results of certain testing done in conjunction with his criminal case. The documents were sent to him at the ADC but he was not notified when they arrived. The ADC determined, after consulting with the Attorney General, that the documents were contraband. The inmate now contends that he was entitled to the documentation and that the ADC failed to follow procedure in this case.

Agency Response: The agency filed a motion to dismiss and a motion for summary judgment arguing that the inmate was entitled to the results of the crime lab testing under the Freedom of Information Act, but that he did not request the entire case file and therefore was not entitled to it. Because of this, the ADC did not give him the case file that was sent to him. The inmate did receive the responsive documents from the crime lab after ADC personnel met with the crime lab and the correct documents were assimilated. The agency also moved to dismiss due to the claims commission's lack of jurisdiction as the case involves a criminal matter in Desha County, as well as due to the lack of any alleged injury shown by the inmate.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss due to the reasons given in the motion. The Commission likewise denied the inmate's motion for reconsideration.