



## 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  
*Neal A. Hall v. Department of Community Correction*  
*Denied and dismissed claim/Appealed by Claimant*

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Date of Occurrence: June 22, 2015  
Date of Claim Filed: October 13, 2016  
Amount Claimed: \$9,070.00  
Amount Awarded: N/A  
Claimant's Representative: N/A  
Respondent's Representative: Wade Hodge

Allegations of Claimant: The inmate was a fugitive and was placed under arrest in Texarkana. At the time, two parole officers employed by the agency seized a sports backpack from the inmate that contained a number of personal items, including cash, a laptop, an iPad, three phones, two prepaid phone cards, a watch, wedding rings, and clothing, valued at approximately \$9,070.00. The inmate was told that the US Marshall had instructed the parole officers to seize the items. However, at the conclusion of the case, the inmate's property was not returned to him. He now seeks the return of the property or, in the event the property is not returned to him, damages.

Agency Response: The agency moved to dismiss arguing that pleadings filed in a federal criminal case in Texas show that the only evidence seized from the inmate by the parole officers employed by the agency was a cell phone and that this fact was not rebutted during the case when the government stated that the inmate abandoned the rest of his property while being pursued as a fugitive. The agency argues that the inmate is estopped from relitigating the issue regarding his property and may not do so here.

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



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**TO:** CLAIMS REVIEW SUBCOMMITTEE

**FROM:** Legal Division Staff

**SUBJECT:** Summary of legal issues  
*Kenneth Davis v. Department of Correction*  
*Denied and dismissed claim/Appealed by Claimant*

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Date of Occurrence: June 16, 2016  
Date of Claim Filed: October 24, 2016  
Amount Claimed: \$1,500.00  
Amount Awarded: N/A  
Claimant's Representative: N/A  
Respondent's Representative: Lauren Heil

Allegations of Claimant: The inmate argues that he was sentenced to a 60-day disciplinary and was not returned his personal property (a mattress) during his 48-hour relief from confinement. The inmate also argues he was forced to do an extra day of confinement above the period for which he was sentenced. He now seeks damages for failure of the ADC to follow procedure.

Agency Response: The agency moved to dismiss arguing that, based on the documentation provided by the inmate, he was given a 48-hour relief between his two 30-day punitive sentences. Further, the inmate's own documentation shows that his mattress was returned to him once it was confirmed that he was on a 48-hour relief. As such, the inmate has failed to state facts that show the agency did not give him his 48-hour relief. Further, the inmate fails to properly plead damages, a necessary element of this claim. A claim of damages must be something more than speculation. As such, the claim should be dismissed.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss due to the reasons set out in the motion. A motion for reconsideration was likewise denied.



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**TO:** CLAIMS REVIEW SUBCOMMITTEE

**FROM:** Legal Division Staff

**SUBJECT:** Summary of legal issues  
*Kenneth Davis v. Department of Correction*  
*Denied and dismissed claim/Appealed by Claimant*

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Date of Occurrence: August 23, 2016; September 7, 2016; and September 20, 2016

Date of Claim Filed: November 7, 2016

Amount Claimed: \$1,500.00

Amount Awarded: N/A

Claimant's Representative: N/A

Respondent's Representative: Lauren Heil

Allegations of Claimant: The inmate argues that he is entitled to a new radio and \$1,500.00 in damages for "stress" after the ADC failed to provide him with a new, sufficient radio as a result of an order by the Claims Review Subcommittee ordering a replacement radio be provided to him in conjunction with another case. The inmate contends the ADC is retaliating against him for his previous successful claim and is depriving him of a new, not-previously-used radio.

Agency Response: The agency moved to dismiss arguing the inmate signed for a replacement radio that was offered to him to satisfy his previous successful claim. Having done so the inmate cannot now complain that the replacement radio was not sufficient. Further, his claim for additional monetary damages for "stress" is not sufficient to constitute a statement of facts upon which relief may be granted. As such, the agency argues that this claim be dismissed.

Opinion of the Claims Commission: The Commission granted the agency's motion to dismiss due to the reasons set out 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*

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Date of Occurrence: October 21, 2015  
Date of Claim Filed: November 10, 2016  
Amount Claimed: \$9,999.00  
Amount Awarded: N/A  
Claimant's Representative: N/A  
Respondent's Representative: Lauren Heil & Jim DePriest

Allegations of Claimant: While serving time for a disciplinary infraction, the inmate was fed food that contained corn or a corn product, despite the fact that the ADC knew the inmate was allergic to corn, which caused an allergic reaction that included swollen lips, blisters, stomach and chest pains, a headache, a sore throat, emotional harm, and stress. He alleges negligence and failure to follow procedure, seeking damages for bodily injuries, emotional harm, stress, and pain and suffering.

Agency Response: The agency moved to dismiss arguing the inmate has failed to state a claim upon which relief may be granted. The agency argued a number of points -- that the inmate was not on a special diet script at the time he consumed the food, that he did not put in for a sick call to have the matter of his diet brought up to the medical staff, that the medical staff did not notice any signs of distress when the inmate was examined, that his claim would not be cognizable in a court of general jurisdiction, and that he failed to properly allege damages beyond subjective and conclusory allegations.

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



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**TO:** CLAIMS REVIEW SUBCOMMITTEE

**FROM:** Legal Division Staff

**SUBJECT:** Summary of legal issues  
*Arthur Pierce II v. Department of Correction*  
*Denied and dismissed claim/Appealed by Claimant*

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Date of Occurrence: June 8, 2016  
Date of Claim Filed: October 17, 2016  
Amount Claimed: \$60.00  
Amount Awarded: N/A  
Claimant's Representative: N/A  
Respondent's Representative: Lauren Heil

Allegations of Claimant: The inmate argues that he was beaten up by another inmate and when he returned to his bunk, two of his graphic novels had been stolen from his locker box. The ADC did not conduct an investigation into the stolen graphic novels. He also alleges that a third graphic novel was lost by ADC. He now seeks damages for loss of property and failure to follow procedure.

Agency Response: The agency moved to dismiss arguing the inmate does not dispute that he failed to lock his locker box and the ADC is not responsible for property that was the result of the inmate's own negligence. Further, a property inventory form shows that the inmate claims he had all his property at the time his third graphic novel was lost. For these reasons the agency contends the inmate's claim should be dismissed for failure to state a claim.

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



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**TO:** CLAIMS REVIEW SUBCOMMITTEE

**FROM:** Legal Division Staff

**SUBJECT:** Summary of legal issues  
*McC Cook/Solo v. Department of Correction*  
*Denied and dismissed claim/Appealed by Claimant*

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Date of Occurrence: October 16, 2013  
Date of Claim Filed: October 13, 2016  
Amount Claimed: unknown  
Amount Awarded: N/A  
Claimant's Representative: N/A  
Respondent's Representative: Jim DePriest

Allegations of Claimant: The inmate argues that the ADC was negligent in preventing an attack on his person by several inmates unassigned to his barracks while he slept. The inmates who attacked him were known white supremacists. He was hit with a large metal bar that caused severe injuries to his face and his body, including his nose, jaw, and teeth, and was transported to the hospital as a result of his injuries. As a result of his injuries, he has suffered a loss of eyesight, a disfigured face, and a concussion. Because of this, he seeks damages for personal injury, pain and suffering, and for failure to properly follow procedure.

Agency Response: The agency moved to dismiss arguing the inmate has failed to state a claim upon which relief may be granted. Specifically, the agency argues that the inmate is comparatively at fault for engaging in trafficking of illegal items that led to the retaliation by the inmates in that he failed to pay for a "green dot card" worth \$100 from another inmate. Because of this, the inmate chose to assume the risk of resulting violence and did not inform the ADC of the possibility of violence. Further, the inmate has not pleaded with specificity as to damages, a necessary component of a negligence claim. Even if he had, he has not provided proof of those damages beyond speculation. Because of these reasons, the agency argues that the claim should be dismissed.

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



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**TO:** CLAIMS REVIEW SUBCOMMITTEE

**FROM:** Legal Division Staff

**SUBJECT:** Summary of legal issues  
*Lee Baker v. Department of Correction*  
*Denied and dismissed claim/Appealed by Claimant*

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Date of Occurrence: October 13, 2016  
Date of Claim Filed: December 19, 2016  
Amount Claimed: \$8,900.00  
Amount Awarded: N/A  
Claimant's Representative: N/A  
Respondent's Representative: Lauren Heil

Allegations of Claimant: The inmate reported to ADC personnel that he was being verbally assaulted and felt that it could turn into a physical assault. Later, the inmate was slapped in the face, breaking his glasses and nose, by the other inmate who earlier had been verbally assaulting him. However, he instead told ADC personnel that he had injured himself in the kitchen as he did not feel safe in reporting what actually occurred. The inmate appears to allege that the attack in the kitchen was in response to or related to ADC personnel failing to meet with him as he had requested regarding his kitchen assignment. He now seeks damages for failure to follow procedure.

Agency Response: The agency moved to dismiss arguing the inmate has failed to properly exhaust his administrative remedies, a condition precedent to the filing of a claim of this nature. Specifically, he did not fully complete the ADC's grievance procedure to allege that the injuries and property damage were the result of an attack by another inmate or that ADC negligently failed to prevent that attack. He also failed to allege if hazardous conditions caused his fall. Further, the inmate has failed to state facts upon which relief may be granted. For these reasons, the agency argues the claim should be dismissed.

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



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**TO:** CLAIMS REVIEW SUBCOMMITTEE

**FROM:** Legal Division Staff

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

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Date of Occurrence: August 11, 2016  
Date of Claim Filed: December 21, 2016  
Amount Claimed: \$15,000.00  
Amount Awarded: N/A  
Claimant's Representative: N/A  
Respondent's Representative: Lauren Heil

Allegations of Claimant: The inmate argues that he was improperly subject to an extended disciplinary while he was already serving a disciplinary sentence in administrative segregation. The second disciplinary was given to him for "insolence to a staff member" and it was subsequently reversed but only after the inmate had already served an additional twenty days. The inmate had argued that the second disciplinary was improperly granted. The inmate now seeks damages for the ADC's failure to follow procedure for those extra days he was forced to serve for the subsequent disciplinary violation that was ultimately overturned.

Agency Response: The agency moved to dismiss arguing the inmate has failed to allege facts supporting an award of damages, which is an essential element for a claim being raised by the inmate. The agency noted that the inmate's class status and good time were restored after the second disciplinary was reversed and that given the inherent restrictions in a prison environment, the extra time spent in a disciplinary setting does not warrant compensation.

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