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ARKANSAS STATE
CLAIMS COMMISSION
OCT 29 2012
RECEIVED

F14

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

- ☐ Mr.
☐ Mrs.
☐ Ms.
☐ Miss

Deverick Scott, #131042, Claimant

vs.

State of Arkansas, Respondent
Dept. of Correction

Do Not Write in These Spaces		
Claim No.	13-0360-CC	
Date Filed	October 29, 2012	
	(Month)	(Day) (Year)
Amount of Claim \$	9,500.00	
Fund	DOC	

Failure to Follow Procedure,
COMPLAINT Pain & Suffering, Mental Anguish

Deverick Scott, #131042, the above named Claimant, of POB 600, Grady, AR 71644

Arkansas 71644 County of Jefferson represented by Prose
(State) (Zip Code) (Daytime Phone No.) (City) (Legal Counsel, if any, for Claim)
of pro box 600 Grady Ar 71644
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.) says:

State agency involved: Arkansas Department Corrections Amount sought: \$9,500.00

Month, day, year and place of incident or service: 2/11/12, 2/6/12, 12/17/11, 8/17/11, 8/1/11

Explanation: Claim 1: On 8/17/11 Claimant Scott was placed on behavior control by respondent Rev Gay Sgt. Hughes and was left on their to 8/23/11 when respondent Hughes brought Claimant Scott his property back respondent Spahnman was the officer inventory claimant property when place on behavior control by Claimant not receiving his property back on 8/20/12 when Lt. S. Lode refuse to give him a shower and property and clean his cell out his a violation of Arkansas state law, Arkansas Regulations and AD # 08-82 Behavior Control Policy. C. Deactivation. After completion of each 72 hour time period the inmate shall be offered a shower, clean undershorts, jump suit, toothbrush, and toothpaste. section 3. Punitive status will all allowable personal property returned to inmate. These Arkansas violations cause Claimant to suffer humiliation, depression, emotional distress, pain for living in these behavior control conditions for 72 more days with nothing. relief sought for claim is \$100 a day everyday Claimant was force to suffer additional days on behavior control respondent violated policy. 3 days. \$300. Claimant file grievance EAMID-03721 on 8/19/11 receive last step of grievance process on 12/6/11 by Larry Mae. Claim 2: see exhibits 1-5, Not Page ->

On 12/17/11 I returned from free world court and had a altercation

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?

NO; when? ; to whom? ; (Department)

; and that the following action was taken thereon:

and that \$ was paid thereon: (2) Has any third person or corporation an interest in this claim? ; if so, state name and address

(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and that the nature thereof is as follows:

; and was acquired on ; in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes

that they are true.

Deverick Scott
(Print Claimant/Representative Name)

Deverick Scott
(Signature of Claimant/Representative)

SWORN TO and subscribed before me at Grady AR
(City) (State)

(SEAL)

on this 19 day of October 2012
(Date) (Month) (Year)

Alicia Pigge
(Notary Public)

SF1- R799

My Commission Expires: 01 31 2021
(Month) (Day) (Year)

with Lt. Washington and in retaliation when I made it back to 1503 they gave me a shower but refuse to give me my property, and put me in my cell to freeze all night with no blankets, sheets & etc. check camera of 1503 in front of shower, side of 1503 when they put me in my cell. They never brought me no cover of bedding. officer Rob work 1503 notified Sgt. Allen. Sgt. Allen notified Laundry, but wasn't nobody working in laundry to bring me no bedding- check camera & log in books. officer McCoy with and got my property bags. Lt. Washington stop him in the hallway told him no I can't get my property. This conduct violates Arkansas state law and regulations - Inmate bedding & clothing. This violation cause claimant to suffer pain from freezing all night. relief sought \$100 for violations of ARC's, AD's that cause plaintiff to suffer. also violations of ~~employee~~ Ar #225 Employee Conduct Standards. Inmate filed grievance on EAM12-00011

next page →

I further swear that the statements, matters and things contained herein are true and accurate to the best of my knowledge, information and beliefs.

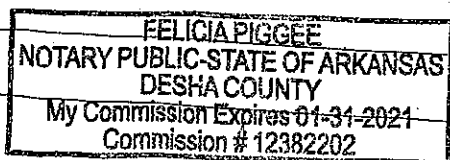
10/16/12

Derech Holt

described and sworn to before me, a Notary Public, on this 19 day of October, 2012.

Felicia Piggee

Notary Public



my commission expires:
01-31-2021

on 12/28/11 receive response from Sgt. Allen stating laundry was contacted to ensure I receive bedding. (Why did he not mention that I never receive the bedding cause laundry was close)

on 3/1/12 Warden burl response was I was given state issue jumpsuit, blanket, and pillow. That's what Lt. Washington told him.

(So why not check camera's on 1503, or asked officer Davis, Sgt. Hughes who came on shift next morning seen me in my cell with nothing and Lt. Dean told me to give me my property.)

On 3/1/12 Larry Mae responded correction action will be taken but no one address or investigated Lt. Washington abusing his authority why I froze in my cell all night see exhibits 6, 7, 8

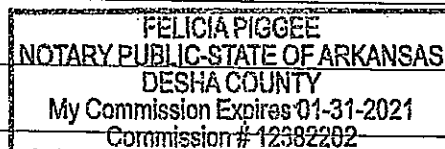
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I further swear that the statements, matters and things contained herein are true and accurate to the best of my knowledge, information and belief.

10/16/12

Denrick Scott

Subscribed and sworn to before me, Notary Public, on this 19 day of October, 2012.



Felicia Piggee

Notary Public

01/31/2021

my commission expires

3 claim:

~~claimant~~

On 2/1/12 at 12:02pm claimant receive a disciplinary by officer Burnell, Zonnie Mae for rule violations 10-3, 12-1, On 3/2/12 claimant was found guilty. he appealed his decision to Warden Burl on On 3/5/12 by Act # 831 inmate disciplinary manual procedure. Claimant receive his appeal back in the mail not signed or dated by anybody. Without claimant disciplinary appeal being signed and dated this part of disciplinary appeal is not completed by policy and should be overturn at the next stage of disciplinary process. claimant appeal to next step Raymond Naylor on June 6, 2012 who affirm the decision he appealed to last step of disciplinary process on June 11, 2012 to Ray Hobbs who denied his appeal forcing claimant to suffer pain for being locked in isolation punitive for 30 days. With lost of all privileges. Can't have visit, talk to family commissary, and ~~any~~ every morning wake up at six o'clock

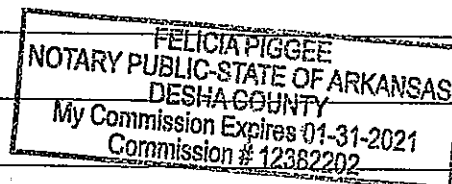
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I further swear that the statements, matters and things contained herein are true and accurate to the best of my knowledge, information and belief

10/16/12

Dewey Scott

subscribed and sworn to before me, Notary Public, on this 19 day of October, 2012.



Felicia Piggee

Notary Public

01-31-2021

my commission expires

in the morning and give up his mat to sleep on concrete slab to 6 o'clock that evening.

Violation of AD# 11-51, Ar# 831 Disciplinary Rules & Regulations
 VII. Major Disciplinary Court ~~Q. Hearings~~ H. Appeal Process

1. The appeal shall be submitted in writing within fifteen (15) days. The Warden/Center Supervisor has thirty (30) calendar days from receipt of the appeal to respond, except that if the inmate is serving punitive time as a result of the disciplinary, the Warden/Center Supervisor should answer the appeal within ten (10) calendar days. Relief sought for S claim is \$100 a day claimant was force to be on punitive isolation. 30 days equal \$3000 three thousand dollars. see exhibits: 9-14

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I further swear that the statements, matters and things contained herein are true and accurate to the best of my knowledge, information and belief.

10/16/12

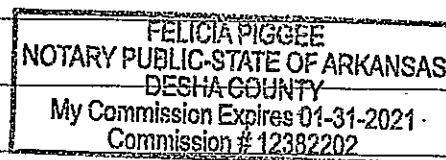
Reverend Scott

Subscribed and sworn to before me, Notary Public, on this 19 day of October, 20 12

Felicia Piggee
 Notary Public

11-31-2021

my commission expires



4 claim:

On 3/3/12 at 10:10 am claimant Scott was written a disciplinary for 2-12, 2-17, 5-7, 11-1, 11-2 by officer Lisa Montagne. He was taken to disciplinary court and found guilty on 3/2/12 without his witness statements. Without checking witness statements, maintenance report to show claimant lights was busted out his cell when he move in there, and witness statement from his witness Tony Brooks #129045 who confessed to be the one who was cursing officer out and not claimant Scott respondents violated Ar#831 inmate disciplinary manual AP#11-57 pg. 14. 3. Any witnesses to the infraction shall prepare declarations to be attached to the charging person's report of the incident. pg 16 8. All written witness statements, whether taken prior to the hearing or obtained at the request of the court, must be read into the record and a copy included in the disciplinary record.

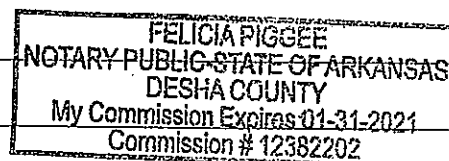
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I further swear that the statements, matters and things contained herein are true and accurate to the best of my knowledge, information and belief.

10/16/12

Subscribed and sworn to before me, Notary Public, on this 19 day of October 20 12

Deneen Smith



Alicia Piggee

Notary Public

01-31-2021

my commission expires

pg. 15 2. A charged must be given at least 24 hrs prior notice of a disciplinary proceeding. The inmate may call witnesses by giving the serving officer the names of the individuals he/she wishes to call. these violations violated Arkansas state law and regulations. claimant appealed disciplinary saying disciplinary officer didn't have his witness's statements and Warden Burl affirmed decision on 3/8/12 saying claimant was guilty "staff observed the window in your cell covered and when instructed to remove the covering" Now claimant wasn't charged in disciplinary having windows covered, but lights. So when Warden Burl went back check witness statement "mantere report" seen my light was busted out when I moved in that cell and never fix his way of trying to cover his officer wrong actions was to cover up. by these violations disciplinary should of been overturn at next levels but on April 27, 2012 Raymond Naylor affirmed the decision on July 30, 2012 Ray Hobbs affirmed decisions

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I further swear that the statements, matters and things contained herein are true and accurate to the best of my knowledge, information and belief.

1/16/12

Derek Lott

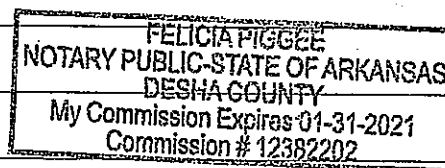
described and sworn to before me, Notary Public, on this 19 day of October 20 12

Felicia Piggee

Notary Public

01/30/2021

my commission expires



these violations cause ~~place~~ claimant to suffer 30 days of isolation punitive lost of all privileges, visits, telephone calls, commissary, and every morning at 6:00 am got to get up and give his mess up, and sleep on ~~the~~ concrete slab with his back. relief sought is \$100 a day for every day claimant spent in isolation punitive due to violations. 30 days is \$3000 for claim 4. see exhibits: 15-22
 Claim 5:

On 8/1/11 officer McKnighten had a verbal altercation with claimant. Scott so in retaliation officer McKnighten didn't feed inmate Scott last chow stating her reason for not feeding him was because he was on ramadan. but he wasn't he had just got feed lunch chow by officer Warren. claimant file grievance # CAM11-03375 on 8/1/11 but officers refuse to address problem of officer McKnighten not feeding inmate. Not feeding claimant violates Arkansas state law and regulations by Arkansas Department of Corrections claimant is suppose to receive 3 meals a day. And that night Sgt. Williams refuse to give him a ramadan tray saying he wasn't on list claimant appealed grievance to last step which ^{Larry Rice} ~~propose~~ still refuse to investigate staff not feeding inmate and on 10/19/11 relief sought \$100. ~~total~~
~~total~~ \$ ~~100.00~~ sought relief

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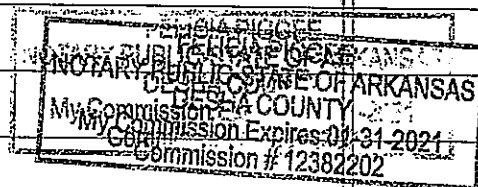
further swear that the statements, matters and things contained herein are true and accurate to the best of my knowledge, information and belief. 10/14/12

Dereck Scott

iscribed and sworn to before me, Notary Public on this
 19 day of October 2012

Felicia Plaque
 Notary Public

01-31-2021 my commission expires.



BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

DEVERICK SCOTT (ADC 131042)

CLAIMANT

V.

NO. 13-0360-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT


ANSWER

COMES NOW the Respondent, Arkansas Department of Correction, and for its Answer, states and alleges as follows:

1. Respondent denies liability in this claim and asserts it will hold the Claimant to strict proof on each allegation unless admitted by Respondent. Respondent reserves the right to plead further upon completion of the investigation by internal affairs and requests the matter be held in abeyance until the investigation is complete.
2. The applicable account information required by the Commission is:
 - a. Agency number: 0480
 - b. Cost Center: HCA0100
 - c. Internal Order: 340301
 - d. Fund Center: 509

WHEREFORE, for the reasons cited above the Respondent prays that the claim be dismissed with prejudice and that Claimant take nothing, or in the alternative that the matter be held in abeyance until completion of the investigation by internal affairs.

Respectfully submitted,
Department of Correction Office of Counsel


LISA MILLS WILKINS Ark. Bar #87190
Attorney Supervisor
Post Office Box 8707
Pine Bluff, AR 71611
(870)267-6844 Office
(870)267-6373 Facsimile

Arkansas Claims Commission

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CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 6th day of November, 2012, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Deverick Scott (ADC 131042)
Varner Supermax Unit
PO Box 400
Grady, AR 71644-0400


LISA MILLS WILKINS Ark. Bar #87190

JAN 08 2013

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CLAIMANT

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

DEVERICK SCOTT (ADC #131042)

V.

NO. 13-0360-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

MOTION TO DISMISS

COMES NOW the Respondent, Arkansas Department of Correction, and for its Motion to Dismiss, states as follows:

CLAIM #1

1. Claimant seeks \$300.00 for failure to follow policy for allegedly leaving him on behavior control from August 17, 2011 until August 23, 2011 which was three (3) days longer than policy permitted.

2. Claimant was housed in punitive isolation during this time and was never placed on behavior control according to the Control Actions section of the eOmis electronic institutional jacket of the Claimant:

07/28/2011	02:10 PM	Punitive Isolation	15	08/13/2011	15
08/13/2011	02:10 PM	Punitive Isolation	15	08/28/2011	15
08/28/2011	02:10 PM	Punitive Isolation	30	09/28/2011	30

3. During this time, his property was taken from him and stored until August 23, 2011. The property form does note at the top 'behavior control' as the reason for confiscation of the property. See Exhibit "A".

4. However, Claimant is only allowed to have the items which were taken from him in punitive isolation 'contingent upon good security'. EARU Policy 10.02.0(I)(9).

5. Claimant's behavior was likely the result of him being denied the personal items while on punitive isolation. Of his seventy-one (71) disciplinary violations since August of 2004, only one did not include a charge of failure to obey an order of staff, indecent exposure, or assaultive or felonious behavior. His most recent charge was December 29, 2012. Just a few days prior to this incident, Claimant was sent to isolation for the following: "On August 6, 2011, Cpl. B. Holloway was assigned to E-Max D Shift Isolation 1 Control located in Zone 1. At 9:57am Cpl. Holloway was hanging keys when she observed inmate D. Scott#131042 whom is housed in Isolation 24 cell standing in the shower with his hand on his exposed penis moving his hand in a back and forward motion. Inmate D.Scott#131042 was given several direct orders to stop his actions. At that time he began threaten Cpl. B. Holloway life. Inmate D.Scott#131042 stated, "you ugly bitch I wish you would write me up I promise on everything bitch I am going to put this knife on your ass bitch, I am going to stick your ass, you want be in Isolation forever". "Since I am jacking off come stand in front of the shower and let me put this dick in your mouth, I am in here for capital murder, You need to check my shit. I don't give a damn about killing your ass. Inmate D. Scott #131042 is aware that making threats on staff and indecent exposure is a direct violation of adc policy. Therefore I am

charging inmate with the above rule violations pending disciplinary court review. End of statement" A month after his property was returned to him, he received two disciplinaries for failure to obey orders of staff. Here is the Notice of Charge of one of those: "On 9/26/11 at approx. 8:05am I (Sgt. Lane), while assigned to Max C-Shift, was conducting a security check in Max 8 (zone 3). During the security check I observed that Max 8-22 cell lights and the cell window were covered up. I arrived to Max 8-22 cell (which houses I/M Deverick Scott #131042) and discovered that the cell lights and window was covered up with paper not allowing light into the cell. I gave I/M Deverick Scott several direct orders to uncover his lights and window but to no avail. At approx. 8:22am, I returned to Max 8 and observed that I/M Deverick Scott still had not removed the paper that was covering the cell lights and window. I then gave I/M Deverick Scott several more direct orders to get his assigned cell in compliance but to no avail. Instead I/M Deverick Scott stated in a loud and aggressive tone of voice, "Man fuck these lights, you stay on some hoe shit nigga. You worried about the wrong thing with your hoe ass." This inmate is in direct violation of A.D.C. and Unit Policies. Therefore I am charging this I/M Deverick Scott #131042 with the following rule violations: 2-12, 2-17, 7-1, 11-1, 11-2, and 12-1 pending D.C.R. End of report."

6. Respondent prays that this claim be dismissed for failure to state a claim upon which relief can be granted under ARCP 12(b)(6).

CLAIM #2

7. Claimant seeks \$100.00 for failure to follow policy for allegedly refusing him his property, bedding and clothing upon his return from court on December 17, 2011 and retaliated against him by placing him in isolation due to an altercation he had with Lt. Washington.

8. Claimant was serving time in punitive isolation and has been since March of 2011. When he returned from court at 8:37 p.m., he was returned to isolation to continue serving his time there. This chart shows his beginning and ending time for the current isolation sentence.

12/06/2011	02:35 PM	Punitive Isolation	30	01/05/2012	30
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9. Claimant states that he was not allowed to have his property upon his return from court. He is correct. The items taken were those which he was not allowed to have in isolation and were stored until his release from punitive. See Exhibit "B".

10. Claimant alleges that he was not provided bedding for the night. Sgt. L. Allen will testify that he provided the proper blanket and clothing to the inmate for this time of year. Sgt. Allen was the ranking officer in isolation and was responsible for the inmates.

11. Respondent prays that this claim be dismissed for failure to state a claim upon which relief can be granted under ARCP 12(b)(6).

CLAIM #3

12. Claimant seeks \$3,000.00 for failure to follow policy due to the oversight in that his disciplinary was not signed.

13. Claimant does not state wherein the policy that this procedural error required the reversal of his disciplinary. In fact, it does not. Had the mistake been caught, the disciplinary would have been signed. It does not negate his guilt which was affirmed at each step in the disciplinary.

14. Respondent prays that this claim be dismissed for failure to state a claim upon which relief can be granted under ARCP 12(b)(6).

CLAIM #4

15. Claimant seeks \$3,000.00 for failure to follow policy for allegedly refusing to allow him to call a witness for his disciplinary on February 3, 2012.

16. Claimant never requested witnesses for his disciplinary hearing when he was served with the notice of charge; therefore, none were called.

17. Claimant was personally observed by Corporal Montague with the light in his cell covered and refused orders to remove the covering. Instead he responded with disrespectful and threatening remarks. A copy of the disciplinary is attached hereto as Exhibit "C".

18. Claimant's disciplinary was reviewed and no procedural violations were found to warrant reversal.

19. Respondent prays that this claim be dismissed for failure to state a claim upon which relief can be granted under ARCP 12(b)(6).

CLAIM #5

20. Claimant seeks \$100.00 for failure to follow policy for allegedly refusing to allow him to call a witness for his disciplinary on February 3, 2012.

21. Claimant failed to exhaust this claim which is required under AD10-32 N. which provides that "inmates are hereby advised that they must exhaust their administrative remedies as to all defendants at all levels of the grievance procedure before filing a Section 1983 lawsuit and Claims Commission claim. If this is not done, their lawsuit or claims may be dismissed immediately."

22. Claimant filed several complaints in grievance EAM #11-03375 despite the grievance policy stating in AD 10-32 IV(D)(2) "The Unit Level Grievance Form should only address one problem/issue and not multiple problems/issues. An inmate must use a separate form for each issue. Only one issue will be addressed. Additional problems/issues contained in the grievance will not be considered as exhausted. Exhaustion of an issue is required prior to filing a lawsuit under the Prison Litigation Reform Act of 1995 on that issue." Claimant's first issue was the flooding of his cell and overflowing of his sink; therefore, that issue was addressed and exhausted.

23. Respondent prays that the claim be dismissed for failure to exhaust.

CLAIM #6

24. Claimant seeks \$1,500.00 for failure to follow policy for allegedly writing him two (2) disciplinary violation charges for one incident on June 18, 2011.

25. Claimant was observed by Lt. Harris on June 18, 2011, with paper over his light and affixed to the walls in violation of policy. He removed the paper from the light, but refused to remove it from the walls. The Notice of Charge reads as follows: "On June 18, 2011 at approximately 10:55 AM, I Lt. C. M. Harris entered Max 6 cellblock. Upon entering and visually scanning the housing area, I observed cell #25 to be completely dark. Upon further observation, I observed pink inmate copies of paperwork covering the cell light, and papers affixed to the cell wall. I yelled out to cell 25 and gave a direct order to remove the paper from the cell light. And to take the papers down off the cell wall. Inmate D. Scott #131042, whom is assigned to this cell did remove the paper from the light but did not take the papers off the wall. It is against ADC policy for inmates to not have their living quarters in compliance, and to disobey written and verbal orders. Therefore I charge inmate D. Scott (131042) with the above rule violations." He was charged with failure to keep his person/quarters within regulation and failure to obey order of staff. He was found guilty of this violation and received suspension of commissary, phone and visitation privileges for sixty (60) days. See Exhibit "D".

26. About twenty (20) minutes later, Claimant was observed by Cpl. Smith with paper covering his window and blackening his cell. He refused orders to remove it from the window. The Notice of Charge reads as follows: "On June 18, 2011 at approx 11:13 AM, I Cpl. C. T Smith was assigned as Max 6 rover. While performong a routine security check I noticed that the I/M assigned to Max 6 cell #25 had paper covering his window blackening his cell, obstructing the view. I gave this I/M a direct order to remove the above listed obstructions but to no avail. I identified this I/M by roster as being I/M D. Scott #131042. Therefore, I Cpl. C. T. Smith am writing, I/M D. Scott #131042 of Max 6 cell #25 a disciplinarl pending DCR for the following rule violations:2-12, 12-1, 11-1." He was found guilty of failure to keep his person/quarters within regulation, failure to obey order of staff and received fifteen (15) days in isolation. See Exhibit "E".

27. Claimant is correct that during the grievance process, the findings were that the matters were the same incident. However, a closer review of the facts shows that the matters were twenty minutes apart, written by different officers, at different times and for different reasons. To find that Claimant can receive a disciplinary for refusing order of staff to become in compliance and remain in compliance without subjecting himself to further penalty is illogical and rewards continuing disobedience of the rules and regulations without further penalty. Such logic would reason that a criminal who kills five (5) people in a single rampage should only be charged with one because it was in one incident. Certainly that is not what the laws or the policy dictates. The policy does prevent multiple officers from writing up one inmate for an incident of which they were all part of containing.

28. Furthermore, Claimant has no liberty interest in having the ADC official follow the procedures. *Munson v. Arkansas Department of Correction*, 294 S. W. 3d 409, 411 (2009). Claimant does not have a liberty interest in the actual procedures to be administered. *Kennedy v. Blankenship*, 100 F. 3d 640 (8th Cir. 1996). *Munson* is one of many cases in which the Supreme Court has considered an inmate's due process challenge to a disciplinary action which resulted in the inmate's loss of status class, certain privileges, punitive isolation, or other sanction. The Court has stated that an inmate does not have a liberty interest in proceedings administered by the ADC and sanctions imposed are insufficient to raise a due process claim. In *Arkansas*, there is no liberty interest in good time under the analysis in *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). A loss of class status and privileges, even if impacting good time, would not compromise a liberty interest. Claimant has asserted no substantive due process

violation as a result of the sanctions that were imposed by the ADC in the proceeding. To state a case for a substantive due process violation, appellant must have shown an atypical and substantive deprivation that was a dramatic departure from the basic conditions of his confinement. *Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995). Demotion from the general population is not the sort of deprivation that qualifies as 'atypical and significant.' *Kennedy* at 642.

29. Respondent prays that this claim be dismissed for failure to state a claim upon which relief can be granted under ARCP 12(b)(6).

CLAIM #7

30. Claimant seeks \$3,000.00 for failure to follow policy for allegedly writing him two (2) disciplinary violation charges for one incident on April 25, 2012.

31. Claimant was charged at 3:05 p.m. on April 25, 2012 and additional charges were added at 5:00 p.m. based on his refusal to surrender the handcuffs upon his return to his cell and grabbing the cuffs from the officer and refusing orders to turn them over. His conduct required Lt. Lane's presence at the cell to ensure compliance with the regulations.

32. While awaiting his disciplinary hearing on the first charges, Claimant's behavior became so disruptive, that Deputy Warden Payne returned him to his cell and considered his attendance waived. Such action is permissible under AD 08-87 IV (E)(4) "...the Major Disciplinary Court shall cause the inmate to appear before it unless the inmate waive in writing or though behavior." See Exhibit "F".

33. Since Claimant waived the first hearing, he cannot appeal the decision. Since he cannot appeal, he cannot exhaust his remedies and the claim as to the first disciplinary should be dismissed for failure to exhaust under AD10-32 N. which provides that "inmates are hereby advised that they must exhaust their administrative remedies as to all defendants at all levels of the grievance procedure before filing a Section 1983 lawsuit and Claims Commission claim. If this is not done, their lawsuit or claims may be dismissed immediately."

34. With respect to the charges issued at 5:00 p.m., the charging officer was the same officer, there were additional charges which were added to the charges previously filed against. These charges were affirmed at all levels of appeal.

35. Furthermore, Claimant has no liberty interest in having the ADC official follow the procedures. *Munson v. Arkansas Department of Correction*, 294 S. W. 3d 409, 411 (2009). Claimant does not have a liberty interest in the actual procedures to be administered. *Kennedy v. Blankenship*, 100 F. 3d 640 (8th Cir. 1996). *Munson* is one of many cases in which the Supreme Court has considered an inmate's due process challenge to a disciplinary action which resulted in the inmate's loss of status class, certain privileges, punitive isolation, or other sanction. The Court has stated that an inmate does not have a liberty interest in proceedings administered by the ADC and sanctions imposed are insufficient to raise a due process claim. In Arkansas, there is no liberty interest in good time under the analysis in *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). A loss of class status and privileges, even if impacting good time, would not compromise a liberty interest. Claimant has asserted no substantive due process violation as a result of the sanctions that were imposed by the ADC in the proceeding. To state a

case for a substantive due process violation, appellant must have shown an atypical and substantive deprivation that was a dramatic departure from the basic conditions of his confinement. *Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995). Demotion from the general population is not the sort of deprivation that qualifies as 'atypical and significant.' *Kennedy* at 642.

36. Respondent prays that this claim be dismissed for failure to state a claim upon which relief can be granted under ARCP 12(b)(6).

WHEREFORE, for the reasons stated above and the evidence presented, Respondent prays that these claims be dismissed.

Respectfully submitted,
Department of Correction
Office of Counsel

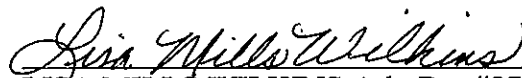


LISA MILLS WILKINS Ark. Bar #87190
Attorney Supervisor
Post Office Box 8707
Pine Bluff, AR 71611
(870)267-6844 Office
(870)267-6373 Facsimile

CERTIFICATE OF SERVICE

I certify that a copy of the above pleading has been served this 4th day of January, 2013, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

DEVERICK SCOTT (ADC #131042)
Varner Supermax
P. O. Box 600
Grady, AR 71644-0600



LISA MILLS WILKINS Ark. Bar #87190

LOWRY

Behavior
Controltreatment
Attention

F-241-1

ADC INMATE PERSONAL PROPERTY INVENTORY RECORD

Inmate's Name: D. Scott ADC#: 131040 Institution: EARU

Non-Expendable Items

ITEM	#	DESCRIPTION	CODE	ITEM	#	DESCRIPTION	CODE
Blanket				Pants			
Body Support Device				Photos			
Books				Photo Album			
Bowls				Pillow Case			
Magazines				Pillow			
Cap/Hat				Prosthetic			
Clock				Radio			
Comb	1		S	Religious Material	1	Bible	S
Cup				Religious Medal			
Dentures				Rings			
Earphones				Sheets			
Earplugs				Shirts			
Eyeglasses				Shoes	1	Curves Orange	S
Gloves				Shower Shoes			
Gym Shoes				Socks			
Hair Braids				Stockings			
Hair Dressing				Sweat Pants			
Headphones				Sweat Shirts			
Inmate ID Badge				Toothbrush	1	w/ broken	S
Jacket/Coat				Towels	2		S
Laundry Bag	1		S	Towels-Hand	2		S
Legal Materials				Undergarments	1		S
Mail Legal	1	yellow envelopes	S	Undershirts	3		S
Mail Personal	5		S	Under shorts	3		S
Mattress				Wash Cloths			
Mirror				Watch-Pocket			
Nail Clippers				Watch-Wrist			
Shoe				Wallet			

Expendable Items

ITEM	#	#/DESCRIPTION	CODE	ITEM	#	#/DESCRIPTION	CODE
Adhesive				Prescriptions			
Antacid	1		S	Razor-Safety			
Flex Pen				Shampoo			
Food Items				Shaving Cream			
Hygiene Items				Soap	1	Next	S

Other

ITEM	#	#/DESCRIPTION	CODE	ITEM	#	#/DESCRIPTION	CODE
Jump White	1		S	Toothpaste	1	Colgate	S
Pen	1	Flex	S				
Brush	1		S				

I hereby certify that all of my property is listed on this inventory and disposition of all property listed on this inventory is correct. I further state that I do not have in my possession the legal materials belonging to any other inmate."

D. Scott 8/17/11 Issd Storage Derek Scott 8/17/11
Signature of Official Receiving Property Date Location Stored Inmate's Signature Date

Sgt. [Signature] 8/17/11 [Signature] 8/17/11
Signature of Official Returning Property Date Witness Signature Date Inmate's Signature Date

"If I should die during my incarceration, I designate the individual listed below to receive my personal property."

Name Address City State Phone

Code Column: D=Donate M=Mail S=Storage I=Issued K=Keep in Possession DES=Destroy
Original - Unit Personal Property Officer Pink Copy - Inmate Yellow Copy - Inmate's File

F-241-1

Revised 8/28/2006

ADC
Arkansas Department of CorrectionExhibit
A

C1

16

F-841-1

ADC INMATE PERSONAL PROPERTY INVENTORY RECORD

Inmate's Name: D. ScottADC#: 131042Institution: EARL/1614 Y.

Non-Expendable Items

ITEM	#	DESCRIPTION	CODE	ITEM	#	DESCRIPTION	CODE
Blanket				Pants			
Body Support Device				Photos			
Books	10		S	Photo Album			
Bowls w/ L&D	1		S	Pillow Case			
Magazines				Pillow			
Cup/Hat				Prosthetic			
Clock				Radio	1	Song	S
Comb				Religious Material			
Cup				Religious Medal			
Dentures				Rings			
Earphones	1	SOME EAR BUDS	S	Sheets			
Earplugs				Shirts			
Eyeglasses				Shoes WHITE 2ndhand	1		S
Gloves				Shower Shoes			
Gym Shoes				Socks			
Hair Braids				Stockings			
Hair Dressing				Sweat Pants			
Headphones				Sweat Shirts			
Inmate ID Badge				Toothbrush			
Jacket/Coat				Towels			
Laundry Bag				Towel-Hand			
Legal Materials				Undergarments			
Mail Legal				Undershirts			
Mail Personal				Under shorts			
Mattress				Wash Cloths			
Mirror				Watch-Pocket			
Nail Clippers				Watch-Wrist			
Padlock				Wallet			

Expendable Items

ITEM	#	#/DESCRIPTION	CODE	ITEM	#	#/DESCRIPTION	CODE
Denture Adhesive				Prescriptions			
Deodorant				Razor-Safety			
Flex Pen				Shampoo			
Food Items				Shaving Cream			
Hygiene Items				Soap			

Other

ITEM	#	#/DESCRIPTION	CODE	ITEM	#	#/DESCRIPTION	CODE
TOOTHBRUSH HOLDER	1		(S)				
PILLOW & CASE	1		(S)				
SHAVE RAZOR	1		(S)				
BLACK MARKER	1		(S)				

"I hereby certify that all of my property is listed on this inventory and disposition of all property listed on this inventory is correct. I further state that I do not have in my possession the legal materials belonging to any other inmate."

Signature of Official Receiving Property 12/18/2011 BOB Location Stored Deputy Scott #13042 12/18/11
Date Date Date

Signature of Official Returning Property 01-08-12 Sgt Williams 12/18/11 Or Witness if inmate refuses to sign
Date Date Date Date Inmate's Signature Date

"If I should die during my incarceration, I designate the individual listed below to receive my personal property."

Name Address City State Phone

Code Column: D=Donate M=Mail S=Storage I=Issued K=Keep in Possession DES=Destroy
Original - Unit Personal Property Officer Pink Copy - Inmate Yellow Copy - Inmate's File

F-841-1

Revised 8/28/2006



Exhibit

B

17

Name: Scott, Deverick D.

ADC #: 131042B PID #: 0152426

ISSS001B

Disciplinary Violation

Tuesday November 13, 2012 01:26:09 PM

Violation Date*:	02/03/2012	Time*:	10:10:00 AM
Version*:	4-1988 - Present		
Facility*:	East AR Regional Max Unit [L02]		
Zone*:	East AR Regional Max Unit		
Location within Facility*:	Living Area		
Shift:			
Charged by Staff*:	Montague, Lisa L	Violation Type*:	Major
Received Date*:	02/03/2012	Time*:	11:26:00 AM
Received By Staff*:	Security, Security		
# Injuries to: Staff*:	0		
Inmates*:	0		
Visitors*:	0		
Weapon Involved:	<input checked="" type="checkbox"/>		
STG Involved:			
Incident Report #:	2012-02-110		

Code	Code Violation
02-12	Keep Person/Quarters W Regulat
02-17	Creating Unnecessary Noise
05-7	Assault - Attempt or Threat upon Staff
11-1	Insolence To A Staff Member
11-2	Using Abusive/Obscene Language

Incident Report Unit: East AR Region. Unit

Incident Report Date/Time: 02/08/2012/02:22:03 PM

Incident Report Number: 2012-02-110

Incident Report Comments By: Lisa L Montague

On 3 Feb 2012 at approx 10:10 AM I Cpl Montague was in Max 8 Zone 3 for classification. As I looked around the cellblock I saw that cell 8-31 was dark and an inmate was standing in the door. I gave Inmate D. Scott 131042 (who identified himself and also by eomis) a direct order to remove the cover from his light. He began to yell and curse, saying, "When I touch down on that floor, I'm gonna show you hoes. You gone be just like your homegirl Ester. Y'all ain't learned shit yet. I ain't got shit but time to do and you motherfucker gonna learn to turn y'all's head when you see me." Again, Inmate Scott was given another direct order to remove the cover from his light and to ceasewith the noise and threats. Inmate Scott's behavior is a direct violation of ADC's inmate regulations. Therefore I am charging Inmate Scott with rule violations 2-12, 5-7, 11-1 and 11-2 pending DCR. End of statement.

CSO Staff*:	Earl, Deangelo M		
Review Date*:	02/09/2012	Action*:	Refer to Hearing Officer/Comm.

☒ None

Inmate Notified by Staff*:	Thorne, Ricky D Jr
----------------------------	--------------------

Inmate Notified Date*: 02/09/2012
Extension Granted as of Date: 02/14/2012

Time*: 08:53:00 AM
Time: 01:30:00 PM

Hearing Date: 03/02/2012

Start Time: 10:36:00 AM

End Time: 10:53:00 AM

Recorder: Minor, Justine M

Tape #: 001

Side: Side A

Meter From: 000

To: 143

2nd Tape #:

Side:

Meter From:

To:

Facility: East AR Region. Unit [L01]

Hearing Officer: Minor, Justine M

Disposition: Guilty

Counsel Substitute Name:

☒ Attendance Waived

my light has been broke and I did not say that
Do you have a statement?

Code Violation	Plea	Verdict
Keep Person/Quarters W Regulat	Not Guilty	Guilty
Creating Unnecessary Noise	Not Guilty	Guilty
Assault - Attempt or Threat upon Staff	Not Guilty	Guilty
Insolence To A Staff Member	Not Guilty	Guilty
Using Abusive/Obscene Language	Not Guilty	Guilty

Punishment Sanctions

Reprimand ☒
Impose Suspended Sanctions for Disciplinary Rule Violation on: ☒
Restriction Days to Serve:

Commissary: 0

Days
Suspended: 0

Mail: 0

Days
Suspended: 0

Phone: 0

Days
Suspended: 0

Visitation: 0

Days
Suspended: 0

Recreation: 0

Days
Suspended: 0

Punitive Isolation Days to Serve: 30

Days
Suspended: 0

How Served: Consecutive

Extra Duty Hours Assigned: 0

Hours 0

CH

GT Class Reduced to: Class IV	Suspended: Class
GT Days Forfeited: 0	Suspended: Days 0
Restitution Owed: 0.00	Suspended: Dollars 0.00
Suspended Sanctions Duration (In Days): 0 N/A	
Days available to be Taken on MR:	on PE/TE:

Inmate was observed refusing to obey staff orders

005 from staff supporting F-1 report. F-1 statement from charging officer.
Staff report is accepted.
Inmate must learn to obey all orders given by staff.

DR Status: Finalized	As of Date: 08/07/2012	Status History
----------------------	------------------------	----------------

Appealed to Warden Date: 03/05/2012	Outcome: Findings Upheld	Date: 03/08/2012
Appealed to H/O Admin. Date: 04/27/2012	Outcome: Findings Upheld	Date: 04/27/2012
Appealed to Director Date: 07/30/2012	Outcome: Findings Upheld	Date: 07/30/2012

Per Warden Burl, Staff observed the window in your cell covered and when instructed to remove the covering you were loud, disrespectful, and threaten staff. this type of behavior will not be tolerated. There was no procedural error found to alter the punishment of your disciplinary. I am affirming the decision rendered. You may appeal my decision to the Hearing Officer Administrator, Mr. Raymond Naylor. After reviewing your appeal, I find that you have failed to provide any additional evidence that would warrant modification or reversal of the disciplinary hearing officer's decision. You failed to comply with a direct order and you were insolent to staff. Therefore, I find no evidence to support modification or reversal of this disciplinary. Your appeal is denied. RH/lr

Return To Prior Status	Prepare To Fix Non-Sanctions Data
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Print this Screen	Prior Page
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[Show Last Updated Information](#)

CH

Name: Scott, Deverick D.

ADC #: 131042B PID #: 0152426

ISSS001B

Disciplinary Violation

Wednesday November 14, 2012
12:08:37 PM

Violation Date*: 06/18/2011	Time*: 10:55:00 AM
Version*: 4-1988 - Present	
Facility*: East AR Regional Max Unit [L02]	
Zone*: East AR Regional Max Unit	
Location within Facility*: Living Area	
Shift:	
Charged by Staff*: Harris, Claudia M	Violation Type*: Major
Received Date*: 06/18/2011	Time*: 01:30:20 PM
Received By Staff*: Security, Security	
# Injuries to: Staff*: 0	
Inmates*: 0	
Visitors*: 0	
Weapon Involved: <input checked="" type="checkbox"/>	
STG Involved:	
Incident Report #:	

Code	Code Violation
02-12	Keep Person/Quarters W Regulat
12-1	Failure To Obey Order Of Staff

On June 18, 2011 at approximately 10:55 AM, I Lt. C. M. Harris entered Max 6 cellblock. Upon entering and visually scanning the housing area, I observed cell #25 to be completely dark. Upon further observation, I observed pink inmate copies of paperwork covering the cell light, and papers affixed to the cell wall. I yelled out to cell 25 and gave a direct order to remove the paper from the cell light. And to take the papers down off the cell wall. Inmate D. Scott #131042, whom is assigned to this cell did remove the paper from the light but did not take the papers off the wall. It is against ADC policy for inmates to not have their living quarters in compliance, and to disobey written and verbal orders. Therefore I charge inmate D. Scott (131042) with the above rule violations.

CSO Staff*: Kelley, Clarence O	
Review Date*: 06/20/2011	Action*: Refer to Hearing Officer/Comm.

☒ None

Inmate Notified by Staff*: Cody, Tameka L	
Inmate Notified Date*: 06/22/2011	Time*: 11:42:00 AM
Extension Granted as of Date:	Time:

Hearing Date: 06/28/2011	
Start Time: 02:12:00 PM	End Time: 02:15:00 PM
Recorder: 1620086	

CL



Exhibit 21
D

Tape #: 005	Side: Side B
Meter From: 605	To: 667
2nd Tape #:	Side:
Meter From:	To:
Facility: East AR Region. Unit [L01]	
Hearing Officer: Ester, Lathan E	
Disposition: Guilty	
Counsel Substitute Name:	

☒ Attendance Waived

No.

Do you have a statement?

Code Violation	Plea	Verdict
Keep Person/Quarters W Regulat	Not Guilty	Guilty
Failure To Obey Order Of Staff	Not Guilty	Guilty

Punishment Sanctions			
Reprimand <input checked="" type="checkbox"/>			
Impose Suspended Sanctions for Disciplinary Rule Violation on: <input checked="" type="checkbox"/>		Date:	Time:
Restriction Days to Serve:			
Commissary:	60	Days Suspended:	0
Mail:	0	Days Suspended:	0
Phone:	60	Days Suspended:	0
Visitation:	60	Days Suspended:	0
Recreation:	0	Days Suspended:	0
Punitive Isolation Days to Serve:	0	Days Suspended:	0
How Served:			
Extra Duty Hours Assigned:	0	Hours Suspended:	0
GT Class Reduced to:		Class Suspended:	
GT Days Forfeited:	0	Days Suspended:	0
Restitution Owed:	0.00	Dollars Suspended:	0.00
Suspended Sanctions Duration (in Days):	0 N/A		
Days available to be Taken on MR:		on PE/TE:	

Scott did fail to keep one's living quarters in accordance with rules and regulations when he had his lights covered up in his cell and had paper on the walls.

F-1 states Scott did fail to keep one's living quarters in accordance with rules and regulations when he had his lights covered up in his cell and had paper on the walls.

Staff report is accepted.

Inmate Scott is a class IV inmate, who must learn to keep one's living quarters in accordance with rules and regulations and to obey all written/verbal orders given by staff for security purposes.

--

ak

DR Status: Finalized

As of Date: 08/12/2011

Status History

Appealed to Warden Date: 06/28/2011	Outcome: Findings Upheld	Date: 06/30/2011
Appealed to H/O Admin. Date: 07/22/2011	Outcome: Findings Upheld	Date: 07/25/2011
Appealed to Director Date: 08/05/2011	Outcome: Findings Upheld	Date: 08/12/2011

07/082011 Per Warden Burl, Staff observed that your living area was not in compliance. I am affirming the decision rendered. EVD

08/12/2011 per Ray Hobbs/ Your quarters were not in compliance with the regulation. Therefore, I find no evidence to support modification or reversal of this disciplinary. Your appeal is denied. EVD

Return To Prior Status

Prepare To Fix Non Sanction Data

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Prior Page

Show Last Updated Information

ok

23

Name: Scott, Deverick D.

ADC #: 131042B PID #: 0152426

ISSS001B

Disciplinary Violation

Wednesday November 14, 2012
12:07:18 PM

Violation Date*:	06/18/2011	Time*:	11:13:00 AM
Version*:	4-1988 - Present		
Facility*:	East AR Regional Max Unit [L02]		
Zone*:	East AR Regional Max Unit		
Location within Facility*:	Living Area		
Shift:			
Charged by Staff*:	Smith, Cowanda T	Violation Type*:	Major
Received Date*:	06/18/2011	Time*:	01:17:00 PM
Received By Staff*:	Harris, Claudia M		
# Injuries to: Staff*:	0		
Inmates*:	0		
Visitors*:	0		
Weapon Involved:	<input checked="" type="checkbox"/>		
STG Involved:			
Incident Report #:			

Code	Code Violation
02-12	Keep Person/Quarters W Regulat
12-1	Failure To Obey Order Of Staff
11-1	Insolence To A Staff Member

On June 18, 2011 at approx 11:13 AM, I Cpl. C. T Smith was assigned as Max 6 rover. While performing a routine security check I noticed that the I/M assigned to Max 6 cell #25 had paper covering his window blackening his cell, obstructing the view. I gave this I/M a direct order to remove the above listed obstructions but to no avail. I identified this I/M by roster as being I/M D. Scott #131042. Therefore, I Cpl. C. T. Smith am writing, I/M D. Scott #131042 of Max 6 cell #25 a disciplinary pending DCR for the following rule violations: 2-12, 12-1, 11-1.

CSO Staff*:	Kelley, Clarence O		
Review Date*:	06/20/2011	Action*:	Refer to Hearing Officer/Comm.

☒ None

Inmate Notified by Staff*:	Cody, Tameka L		
Inmate Notified Date*:	06/22/2011	Time*:	11:41:00 AM
Extension Granted as of Date:		Time:	

Hearing Date:	06/28/2011		
Start Time:	02:17:00 PM	End Time:	02:20:00 PM
Recorder:	1620086		

Tape #: 005	Side: Side B
Meter From: 667	To: 724
2nd Tape #:	Side:
Meter From:	To:
Facility: East AR Region. Unit [L01]	
Hearing Officer: Ester, Lathan E	
Disposition: Guilty	
Counsel Substitute Name:	

☒ Attendance Waived

I request that the camera be checked. Ms. Smith wasn't anywhere near my cell. Lt. Harris came in and asked did she write me up for the paper on my lights and wall.
Do you have a statement?

Code Violation	Plea	Verdict
Keep Person/Quarters W Regulat	Not Guilty	Guilty
Failure To Obey Order Of Staff	Not Guilty	Guilty
Insolence To A Staff Member	Not Guilty	Not Guilty

Punishment Sanctions

Reprimand	<input checked="" type="checkbox"/>	Date:	Time:
Impose Suspended Sanctions for Disciplinary Rule Violation on:	<input checked="" type="checkbox"/>		
Restriction Days to Serve:			
Commissary: 0	Days	Suspended: 0	
Mail: 0	Days	Suspended: 0	
Phone: 0	Days	Suspended: 0	
Visitation: 0	Days	Suspended: 0	
Recreation: 0	Days	Suspended: 0	
Punitive Isolation Days to Serve: 15	Days	Suspended: 0	
How Served: Consecutive			
Extra Duty Hours Assigned: 0	Hours	Suspended: 0	
GT Class Reduced to: Class IV	Class	Suspended:	
GT Days Forfeited: 0	Days	Suspended: 0	
Restitution Owed: 0.00	Dollars	Suspended: 0.00	
Suspended Sanctions Duration (In Days): 0 N/A			
Days available to be Taken on MR:		on PE/TE:	

Scott did fail to keep one's living quarters in accordance with rules and regulations when he had paper covering his lights and would not remove it from the lights.

clb

F-1 states Scott did fail to keep one's living quarters in accordance with rules and regulations when he had paper covering his lights and would not remove it from the lights.

Staff report is accepted.

Inmate Scott is a class IV inmate, who must learn to keep one's living quarters in accordance with rules and regulations and to obey all written/verbal orders given by staff for security purposes.

DR Status: Finalized

As of Date: 11/03/2011

Status History

Appealed to Warden Date: 06/28/2011	Outcome: Modified	Date: 11/03/2011
Appealed to H/O Admin. Date: 08/19/2011	Outcome: Findings Upheld	Date: 08/19/2011
Appealed to Director Date:	Outcome: N/A	Date:

07/08/2011 Per Warden Burl, Staff observed that your living area was not in compliance. I am affirming the decision rendered. EVD

11/03/2011 Per Warden Burl, R.T. Ball Inmate Scott, you give the major disciplinary violations Written on June 18, 2011. Upon review of documentation, I find you were issued two disciplinary regarding the same incident. AD08-87 Inmate Disciplinary Manual states you may only be charged one violation for a given behavior. I find merit in Your complaint. Corrective action will be taken.

Return To Prior Status

Prepare To Fix Non-Sanctions Data

Print this Screen

Prior Page

[Show Last Updated Information](#)

Name: Scott, Deverick D.

ADC #: 131042B PID #: 0152426

ISSS001B

Disciplinary Violation

Thursday November 08, 2012
12:28:41 PM

Violation Date*:	04/25/2012	Time*:	03:05:00 PM
Version*:	4-1988 - Present		
Facility*:	East AR Regional Max Unit [L02]		
Location within Facility*:	Living Area		
Charged by Staff*:	Lockhart, Douglas S	Violation Type*:	Major
Received Date*:	04/25/2012	Time*:	04:55:00 PM
Received By Staff*:	Security, Security		
# Injuries to: Staff*:	0		
Inmates*:	0		
Visitors*:	0		
Weapon Involved:	<input checked="" type="checkbox"/>	STG Involved:	
Incident Report #:			

Code	Code Violation
12-1	Failure To Obey Order Of Staff
2-15	Tampering W/Or Blocking Lock

Notice of Charge

On April 25, 2012, at approximately 3:05 pm. I Sgt .D.Lockhart Isolation supervisor was attempting to place inmate D. Scott ADC#131042 back into Iso-29 cell zone1, after the cell was shok down. After taking the restraints off the inmate legs, I began to remove the cuffs. When I opened one cuff, inmate Scott grabbed the other cuff, that was still on his wrist. i gave Inmate a direct order to release the cuff so that it could be removed. Inmate Scott did not comply stating "yo are going to have to get somebody down here cause I ain't giving up this cuff. I then radioed for the shift supervisor, Lt. S. Lane. When Lt. Lane arrived, he gave inmate Scott a direct order to release the cuff so that it could be removed. Inmate Scott did comply without further incident. Inmate Scott has been placed on behavior control. The actions of inmate Scott are a direct violation of ADC and unit policy. Therefore, I am charging inmate Scott #131042 with rule violation 12-1, 2-15 and 1-2 pending disciplinary court review. End of statement.
TimeStamp: 25 April 2012 17:03:08 --- User: Stephen Lane (LANST01)

CSO Staff*:	Kelley, Clarence O	
Review Date*:	04/27/2012	Action*: Refer to Hearing Officer/Comm.

Witness Statements

☒ None

Cpl. Graham
Cpl. Birdwell
Cpl. Jones
Lt. Lane

Inmate Notified by Staff*:	Thorne, Ricky D Jr	
Inmate Notified Date*:	05/02/2012	Time*: 02:00:00 AM
Extension Granted as of Date:		Time:

Name: Scott, Deverick D.

ADC #: 131042B PID #: 0152426

ISSS001B

Disciplinary Violation

Thursday November 08, 2012
12:25:22 PM

Violation Date*:	04/25/2012	Time*:	05:00:00 PM
Version*:	4-1988 - Present		
Facility*:	East AR Regional Max Unit [L02]		
Location within Facility*:	Living Area		
Charged by Staff*:	Lockhart, Douglas S	Violation Type*:	Major
Received Date*:	04/25/2012	Time*:	05:00:26 PM
Received By Staff*:	Lane, Stephen V		
# Injuries to: Staff*:	0		
Inmates*:	0		
Visitors*:	0		
Weapon Involved:	<input checked="" type="checkbox"/>	STG Involved:	
Incident Report #:	2012-04-214		

Code	Code Violation
02-15	Tampering W/Or Blocking Lock
01-2	Taking Over Part Physical Pint
12-1	Failure To Obey Order Of Staff

Notice of Charge

On April 25, 2012, at approximately 3:05 pm. I Sgt .D.Lockhart Isolation supervisor was attempting to place Inmate D. Scott ADC#131042 back into Iso-29 cell zone1, after the cell was shok down. After taking the restraints off the inmate legs, I began to remove the cuffs. When I opened one cuff, inmate Scott grabbed the other cuff, that was still on his wrist. i gave Inmate a direct order to release the cuff so that it could be removed. Inmate Scott did not comply stating "yo are going to have to get somebody down here cause I ain't giving up this cuff. I then radioed for the shift supervisor, Lt. S. Lane. When Lt. Lane arrived, he gave Inmate Scott a direct order to release the cuff so that it could be removed. Inmate Scott did comply without further incident. Inmate Scott has been placed on behavior control. The actions of inmate Scott are a direct violation of ADC and unit policy. Therefore, I am charging inmate Scott #131042 with rule violation 12-1, 2-15 and 1-2 pending disciplinary court review. End of statement.

TimeStamp: 25 April 2012 17:03:08 --- User: Stephen Lane (LANST01)

CSO Staff*:	Kelley, Clarence O		
Review Date*:	04/27/2012	Action*:	Refer to Hearing Officer/Comm.

Witness Statements

☒ None

Entered with the wrong date

Inmate Notified by Staff*:	Thorne, Ricky D Jr		
Inmate Notified Date*:	05/02/2012	Time*:	02:00:00 PM
Extension Granted as of Date:		Time:	

3013
400000

Before The Arkansas State Claims Commission

1 of 8

Davenick Scott #131042

Claimant

ARKANSAS STATE
CLAIMS COMMISSION

JAN 14 2013

V.

No: 13-0360-CC

RECEIVED

Arkansas Department of Correction

Respondent

"Memorandum of Law"

Response in Opposition to motion to Dismiss

Comes now the Claimant D. Scott, Proceeding Pro se for this memorandum of Law. and hereby states as follows:

The grounds for this Petition arise from alleged incidents, on Aug. 17, 2011, ~~Dec.~~ Dec. 17, 2011, Feb. 11, 2012, Feb. 3, 2012, Aug. 1, 2011, June 18, 2011, April 25, 2012 by several ARK officers.

Claim # 1

Administrative Directive #08-82 Behavior control pg. 3 of 4 section C. Deactivation. 1. After completion of each seventy-two (72) hour time period, the inmate shall be offered a shower, clean undergarments, jumpsuit, toothbrush and toothpaste.

#3. Upon deactivation and completion of Behavior control status, the inmate will be "assigned" to previous status, D.C.R. or Punitive status will be allowable personal property returned to inmate.

Note: So me not recieving my punitive property that they took I already had on punitive which was my legal work, hygiene, cover, jumpsuit & il 8/23/12 which I should of got on

2 of 8

9/20/17, but officers refuse along with shower stating the shift put you on behavior control is the shift got to take you off is violating AD# 08-82

also me being on punitive has nothing to due about officers violation but since you brought it up we can address it. That August 6, 2011 Mrs. holloway. see scott v. Hobbs 2:12-cv-00245-SWW-JTV officer holloway falsified document out of retaliation when Lt. Allen, Sgt. Williams walked in 1501 and caught officers holloway calling me a dicksucker and my momma a dicksucker and I'm a bitch ass nigga. Incident on 9/27/11 Sgt. Lane was threw out cause he falsified that document.

Claim #2

Sgt Allen notified Laundry to search blankets and jumpsuit, Camera will show aint nobody come to my cell once I got out shower unto breakfast to feed chow, I stayed in cell all night froze. Camera will show next morning officer davis, Lt. Dean, Sgt. Hughes, found me in cell with nothing and went and got me my property.

Note: Dont nobody work in laundry at night time so Laundry couldn't seen me no cover regardless Lt. Washington had keys to get me my property and cover and refuse out of retaliation we had a verbal altercation at PBX.

Claimant freezing in his cell all night, not receiving blanket, property, and bedding violated. AR, AD Inmate property control, APC handbook guidelines & procedures, AR inmate bedding, and linen

Claim #3

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AD #11-51 Inmate Disciplinary manual pg. 20 of 43 H. Major Disciplinary Appeal Process. 1. The Warden supervisor has (30) calendar days from receipt of the appeal to respond, except that if the inmate is serving punitive time as a result of the disciplinary, the Warden/Center Supervisor should answer the appeal within (10) calendar days.

Note: By Warden not signing and dating appeal, disciplinary appeal process is not complete. Who's to say who sent disciplinary appeal back to claimant? Who's to say how many days it took claimant to receive it. Without due process of disciplinary appeal process it should of been overruled at next level. And to appeal it two next 2 steps and they still didn't catch it shows they don't investigate just sign off on paperwork that is already prepared. Thus violating AD #11-51 Inmate Disciplinary manual. It is officers supervisors job to investigate thoroughly by policy. Appeal must be signed indicating Disciplinary appeal investigation is complete.

Claim #4

AD #11-51 Inmate Disciplinary Manual pg. 15 of 43 2. The inmate may call witnesses by giving the serving officer the names of the individuals he/she wishes to call.

8. It must be determined whether all allowed witness statements requested by the inmate and all other items of physical or documentary evidence are present before the court.

All written witness statements, whether taken prior to the hearing or obtained at the request of the court, must be read into the record and a copy included in the disciplinary court.

15. The Disciplinary hearing officer must carefully weigh all evidence with special emphasis upon individual pieces of "primary evidence" I. Failure to obtain witness statements

Note A: ~~the~~ Claimant herein called inmate Tony Brooks for a witness in defense of this disciplinary. This inmate it was he threaten and cursed the officer. In fact he told Capt. McNary he did it and although officer Montague admitted the cell was dark the witness statement was never obtain nor was he otherwise allowed to present testimony in petitioner's defense.

Whereas Due process Established by the U.S. Supreme Court in Wolf v. McDannell (418 U.S. 539) Has been sweepingly interpreted to include the opportunity to call witnesses.

The 8th. Cir. Has held; "due process is violated when prison officials failed to call witnesses requested by inmate and record is incomplete Moran v. Fairrier 924 F.2nd 134

B: II. Denial of right to present Documentary Evidence

A. In Wolf v. McDannell 418 U.S. (1974) The due process right to present Documentary Evidence in Prison Disciplinary hearing was clearly Established by the U.S. Supreme Court

Note: Herein claimant requested maintenance reports that would prove his lights were busted out his cell when he moved in and never fix. That the charging only thought his lights were covered because its a common practice for prisoners to do so. Failure to obtain these reports denied due process.

B. videotapes are a type of document and can play the role of eyewitness. Courts have held that disciplinary Bodies must review relevant video tapes, including prisoners being shown videotapes that are used as evidence against them. Claimant herein requested camera as witness to show officer Montague never came to his cell to see if his light was cover up, just stood in middle of floor and assume. And notification officer Theron told claimant he couldn't put camera down for a witness per Pine Bluff instructions. The videotape review being denied, thus denying due process.

see Phelps v. Tucker 370 F. supp. 2 792 (ND Ind 2008)
refusal to review videotape denies due process notwithstanding officials claim it wasn't very clear.

II Denied Right to Appeal

On 3/5/12 claimant filed a appeal to Warden or designate in reference matter. for his affirmation the Warden relied on Erroroneos information that Disciplinary alleged a Window was covered... Disciplinary said nothing about a window.

This error on the part of the Warden denied claimant that point of the appeal process.

Claim #5

Note: Although Warden Burl did not commit the due process, and ADC handbook, Ark-state law violations, he became responsible for them when he fail to correct them or address them in the course of his supervisory responsibility's, and denied claimant grievance appeal. A supervisor who learns of a constitution violation through report or appeal may be held liable for failing to correct it. Williams v. Smith, 781 F.2d 319, 323-24 (2d Cir. 1986) Hicks v. Frey, 992 F.2d 1450, 1455 (6th Cir. 1993)

So far officer McKnighted not to feed claimant, Sgt. Williams Warden Burl, Larry Mae refuse to investigate and asked officer why she didn't feed claimant

Claim #6

The reason Respondent refuse to produce copies of grievance investigations is because Lt Harris admitted to writing disciplinary herself and telling officer Smith protest. Camera review would indicated Lt Harris coming in baracks at time officer Smith feed chow on bottom tier seen claimant light over up and tell her to write claimant disciplinary.

Violation AP# 08-87 Inmate Disciplinary Manual states you only be charged one violation for a given behavior.

see Moran v Farrier 924 F.2d 134 prison's official violated inmate's due process right at disciplinary hearing by failing to call witness requested by inmate as required by prison regulations

Note: Lt Harris acted to punish willful or malicious conduct ~~see case~~ As the United States Supreme Court has recognized, a prisoner may recover punitive damages when a defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to rights of others. Smith v. Wade, 461 U.S. 30, 56 (1983); Williams v. Brimley, 116 F.3d 351, 354 (8th Cir. 1997)

Claim # 7

Respondent indicates that it should be allowed for an inmate to be punished for some incident. Even so: it is against Arkansas state law, AD #88-87 Inmate Disciplinary manual.

Sgt. Lockhart told Warden Payne he only wrote one disciplinary so we should overlook the abuse of authority by one ADC officer whoever did it, who's action was motivated by evil motives or intent, or when it involves reckless or callous disregard to rights of others. Smith v. Wade, 461 U.S. 30, 56 (1983); Williams v. Brimley 116 F.3d 351, 354 (8th Cir. 1997)

Respondent wants us to overlook the violation of due process disciplinary hearing whether claimant was present or not. Disciplinary officer was suppose to ~~write~~ lay all evidence before a

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verdict of guilty or innocence.

A. Date: Time of second disciplinary say 5:00pm but in body it states 3:05pm incident. Which 3 mins earlier she found claimant guilty of these rule violator infractions.

By disciplinary officers and Warden: Director to not overturn this violation or correct it. in the course of their supervisory responsibility's, and denied claimant disciplinary appeal & grievance appeal. A supervisor who knows of a constitution violation through report or appeal may be held liable for failing to correct it.

Williams v. Smith 781 F.2d 319, 323-24 (2d Cir. 1986) Archer v. Frey, 992 F.2d 1450, 1455 (6th Cir. 1993)

Dated: 1/7/13

Doreen Smith #731042

STATE CLAIMS COMMISSION DECISION
OPINION

Amount of Claim \$ 9,500.00

Claim No. 13-0360-CC

<u>Deverick Scott, #131042</u>		<u>Attorneys</u>	
vs. <u>Claimant</u>		<u>Pro se</u> <u>Claimant</u>	
<u>Department of Correction</u>		<u>Lisa Wilkins, Attorney</u>	
<u>Respondent</u>		<u>Respondent</u>	
<u>State of Arkansas</u>			
<u>Date Filed</u>	<u>October 29, 2012</u>	<u>Type of Claim</u>	<u>Failure to Follow Procedure/Pain & Suffering & Mental Anguish</u>

FINDING OF FACTS

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss," with respect to all seven(7) of Claimant's claims for reasons set forth in paragraphs 1-5, 7-10, 12, 13, 15-18, 20-23, 24-28 & 30-35 contained in the motion. Therefore, these claims are hereby unanimously denied and dismissed.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss," with respect to all seven(7) of Claimant's claims for reasons set forth in paragraphs 1-5, 7-10, 12, 13, 15-18, 20-23, 24-28 & 30-35 contained in the motion. Therefore, these claims are hereby unanimously denied and dismissed.

Date of Hearing February 8, 2013

Date of Disposition February 8, 2013

<u>[Signature]</u>	<u>Chairman</u>
<u>[Signature]</u>	<u>Commissioner</u>
<u>Bill Lancaster</u>	<u>Commissioner</u>

Deverick Scott #131042

MAR 12 2013

Claimant Arkansas Claims Commission

RECEIVED

MAR 5 2013

v.

No: 13-0360-CC

RECEIVED

Arkansas Dept. of Correction

Respondent

Notice of Appeal; motion for reconsideration
 Comes Now the claimant D. Scott proceeding prose for this memorandum of Law. claimant asks Commission to stop being bias against inmates. What example do they think they make to inmates who is sent to prison to be rehabilitated, but the officers who govern us are allowed to break Ark. state law & policies & procedures and they supervisors turn a blind eye. This why inmates lose respect for law. the following motion hereby states as follows:

The grounds for this petition arise from alleged incidents, on Aug. 17/11, 12/17/11, 3/11/12, 3/3/12, 8/1/11, 6/18/11, 4/25/12 by several AOC officers
Claim #1

AD #8-82 Behavior control pg 3 of 4 section C. Deactivation. 1. After completion of each seventy-two (72) hour time period, the inmate shall be offered a shower, clean undergarments, jumpsuits, toothbrush, and tooth paste. #3. Upon deactivation and completion of Behavior Control status, the inmate will be reassigned to previous status, D.C.R. or Punitive status will be allowable personal property returned to inmate. see exhibits: 4, 53-60

Note: So me not receiving my punitive property that they took I already had on punitive which was my legal work, hygiene, cover, jumpsuit till 8/23/12 which I should of got on 8/20/12 but officers refuse along with shower stating the shift put you on behavior control stating the shift took it got to give it back to me. "My pass has nothing to do with officers violating policy leaving me in my cell 3 days with nothing" see exhibits: 2, 3, 8, 9,

also me being on punitive has nothing to due about officers violation but since you brought it up we can address it

The Aug 6/2011 Mr. Holloway see Sectt v. Hobbs 2:12 cv 245 SW. JTV officer falsified document out of retaliation when Lt. Allen, Sgt. Williams walked in iso 1 and caught officers holloway calling me a dicksucker and my mamma a dicksucker and I'm a bitch a nigga. Incident on 7/27/11 Sgt. Isene was threw out cause he falsified documents

Claim #2

Sgt. Allen notified Laundry to send blankets and jumpsuit, camera will show ain't nobody come to my cell once I got out shower unto breakfast to feed chow, I stayed in cell straight froze. Camera will show next morning officer Davis, Lt. Dern froze. Sgt. Hughes, found me in cell with nothing and vest and got me my property.

Note: Claimant freezing in his cell all night, not receiving blankets, property, and bedding violated. Ar, AD inmate property control, ADC handbook, guidelines: procedures, Ar, inmate bedding, and linen. see exhibit: 53-60

Claim #3 \$3000

3 of 8

AD #11-51 Inmate Disciplinary manual pg. 20 of 43 H. Major Disciplinary Appeal Process. 1. The Warden supervisor has (30) calendar days for receipt of the appeal to respond, except that if the inmate is serving punitive time as a result of the disciplinary, the Warden/Center Supervisor should answer the appeal within (10) calendar days. see exhibits:

Note: By Warden Burl not signing and dating appeal, disciplinary appeal process is not complete. Who's to say who sent disciplinary appeal back to claimant? Who's to say how many days it took claimant to receive it. Without due process of disciplinary appeal process it should of been overruled at next level. And to appeal it two next 2 steps and they still didn't catch it shows they don't investigate just sign off on paperwork that is already prepared. Thus making AD #11-51 Inmate Disciplinary manual. It is officers supervisors job to investigate thoroughly by policy. Appeal must be signed indicating Disciplinary appeal investigation is complete. see exhibits: "see originals document" & Exhibits 11

Claim #4 \$3000

AD #11-51 Inmate Disciplinary Manual pg. 15 of 43 2.

The inmate may call witnesses by giving the serving officer the names of the individuals he/she wishes to call.

8. It must be determined whether all allowed witness statements requested by the inmate and all other items of physical or documentary evidence are present before the court.

All written witness statements, whether taken prior to the hearing or obtained at the request of the court, must be read into the record and a copy included in the disciplinary court.

15. The Disciplinary hearing officer must carefully weigh all evidence with special emphasis upon individual pieces of "primary evidence".

I. Failure to obtain witness statements
 Note A: Claimant herein called inmate Tony Brooks for a witness in defense of this disciplinary. This inmate it was he threatened and cursed the officer. In fact he told Capt. McNerry he did it and although officer Montague admitted the cell was dark the witness statement was never obtained nor was he otherwise allowed to present testimony in petitioner's defense.

Whereas Due process Established by the U.S. Supreme Court in Wolf v. McDonnell (418 U.S. 539) Has been sweepingly interpreted to include the opportunity to call witnesses.

The 8th Cir. Has held; "due process is violated when prison officials failed to call witnesses requested by inmate and record is incomplete Moran v. Fairrier 924 F.2nd 134

B: II. Denial of right to present Documentary Evidence

A. In Wolf v. McDonnell 418 U.S. (1974) The due process right to present Documentary Evidence in Prison Disciplinary hearing was clearly Established by the U.S. Supreme Court

Note: Herein claimant requested maintenance reports that would prove his lights were busted out his cell when he moved in and never fix. That the charging only thought his lights were covered because it's a common practice for prisoners to do so. Failure to obtain these reports denied due process.

B. videotapes are a type of document and can play the role of eyewitness. Courts have held that disciplinary bodies must review relevant videotapes, including prisoners being shown videotapes that are used as evidence against them. Claimant herein requested camera as witness to show officer Montague never came to his cell to see if his light was cover up, just stood in middle of floor and assume. And notification officer thorn told claimant he couldn't put camera down for a witness per Pire bluff instructions. The videotape review being denied, thus denying due process.

see *Phelps v. Tucker* 370 F. Supp. 2 792 (ND Ind 2008) refusal to review videotape denies due process notwithstanding officials claim it wasn't very clear.

III Denied Right to Appeal

On 3/5/12 claimant filed a appeal to Warden or designate in reference matter. for his affirmation the Warden relied on Erroroneos information that Disciplinary alleged a window was covered... Disciplinary said nothing about a window.

This error on the part of the Warden denied claimant that point of the appeal process.

Claim #5 \$100

Note: Although Warden Burl did not commit the due process, and APC handbook, Ark-state law violations, he became responsible for them when he fail to correct them or address them in the course of his supervisory responsibility's, and denied claimant grievance appeal. A supervisor who learns of a constitution violation through report or appeal may be held liable for failing to correct it. Williams v. Smith, 781 F.2d 319, 323-24 (2d Cir. 1986) Hicks v. Frey, 992 F.2d 1450, 1455 (6th Cir. 1993)

So for officer McKnighted not to feed claimant, Sgt Williams Warden Burl, Larry Mac refuse to investigate and asked officer why she didn't feed claimant

Claim #6 \$3,000

The reason Respondent refuse to produce copies of grievance investigations is because Lt Harris admitted to writing disciplinary herself and telling officer Smith write it. Camera review would indicated Lt Harris coming in barracks at time officer Smith feed chow on bottom tier seen claimant light cover up and tell her to write claimant disciplinary.

Violation AP# 08-87 Inmate Disciplinary Manual states you only be charged one violation for a given behavior.
see exhibit 48, 22

see Moran v. Farrier 924 F.2d 134 prison's official violated inmate's due process right at disciplinary hearing by failing to call witness requested by inmate as required by prison regulations

Note: Lt Harris acted to punish willful or malicious conduct ~~see case~~ As the United States Supreme Court has recognized, a prisoner may recover punitive damages when a defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to rights of others. Smith v. Wade, 461 U.S. 30, 56 (1983); Williams v. Brimley, 116 F.3d 351, 354 (8th Cir. 1997)

Claim # 7 \$13,000

Respondent indicates that it should be allowed for an inmate to be punished for some incident. Even so: it is against Arkansas state law, AD #88-87 Inmate Disciplinary manual. see exhibit: 48

Sgt. Lockhart told Warden Payne he only wrote one disciplinary so he should overlook the abuse of authority by one ADC officer who ever did it, who's action was motivated by evil motives or intent, or when it involves reckless or callous disregard to rights of others. Smith v. Wade, 461 U.S. 30, 56 (1983); Williams v. Brimley 116 F.3d 351, 354 (8th Cir. 1997) see exhibit: 50

Respondent wants us to overlook the violation of due process disciplinary hearing whether claimant was present or not. Disciplinary officer was suppose to ~~use~~ lay all evidence before a

8 of 8

verdict of guilty or innocence.

A. Dade's time of second disciplinary say 5:00pm but in body it states 3:05pm incident. which 3 mins earlier she found claimant guilty of these rule violations infractions.

By disciplinary officers and Warden/Director to not overturn this violation or correct it. in the course of their supervisory responsibility's, and denied claimant disciplinary appeal & grievance appeal. A supervisor who learns of a constitution violation through report or appeal may be held liable for failing to correct it.

Williams v. Smith 781 F.2d 319, 323-24 (2d Cir. 1986) Arcks v. Frey, 992 F.2d 1450, 1455 (6th Cir. 1993) see exhibits: 50, 51, 52

Dated: ~~Feb~~ 3/1/13

Doreen Smith #731042

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 9,500.00 Claim No. 13-0360-CC

Deverick Scott, #131042 Claimant Attorneys Pro se Claimant
vs.

Department of Correction Respondent Lisa Wilkins, Attorney Respondent
State of Arkansas

Date Filed October 29, 2012 Type of Claim Failure to Follow Procedure, Pain & Suffering & Mental Anguish

FINDING OF FACTS

The Claims Commission hereby unanimously denies Claimant's "Motion for Reconsideration" for the Claimant's failure to offer evidence that was not previously available. Therefore, the Commission's February 8, 2013, order remains in effect. At the request of the Claimant, this claim will be referred to the Arkansas General Assembly.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously denies Claimant's "Motion for Reconsideration" for the Claimant's failure to offer evidence that was not previously available. Therefore, the Commission's February 8, 2013, order remains in effect. At the request of the Claimant, this claim will be referred to the Arkansas General Assembly.

Date of Hearing April 11, 2013

Date of Disposition April 11, 2013

Richard May Chairman
Thurmon Commissioner
Bill Fancourt Commissioner