

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

Arkansas State Claims Commission

D8.

BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

MAR 25 2015

RECEIVED

- Mr. Mrs. Ms. Miss

JEREMY KENNEDY # 93061, Claimant

vs.

State of Arkansas, Respondent AR Dept. of Community Correction

Form with fields: Claim No. 15-0641-CC, Date Filed March 25, 2015, Amount of Claim \$ 10,000.00, Fund ADCC

COMPLAINT

JEREMY KENNEDY, the above named Claimant, of P. O. BOX 1000, WRIGHTSVILLE, AR, 71283, County of LINCOLN, represented by PRO SE

of AR. DEPT. OF COMMUNITY CORRECTION, State agency involved

Month, day, year and place of incident or service: MARCH 10, 2015

Explanation:

[Redacted explanation text]

I, JEREMY KENNEDY, MARKED THESE LINES OUT

PLEASE SEE ATTACHED

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

and that \$ was paid thereon: (2) Has any third person or corporation an interest in this claim?

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.

JEREMY KENNEDY (Print Claimant/Representative Name)

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

(SEAL)

STANLEY CHUKWUANU, NOTARY PUBLIC-STATE OF ARKANSAS, PULASKI COUNTY, My Commission Expires 06-20-2021, Commission # 12383222

17th day of MARCH 2015 (Date) (Month) (Year)

Stanley Chukwuanu (Notary Public)

SF1- R7/99

My Commission Expires: 06/20/2021 (Month) (Day) (Year)

2

ACT 679 OF 2005 (A.C.A. § 16-93-211) IS A PROGRAM CREATED BY THE ARKANSAS LEGISLATURE WHICH ALLOWS THE ARKANSAS PAROLE BOARD TO ~~BE~~ RELEASE ELIGIBLE INMATES TO A TRANSITIONAL HOUSING FACILITY UP TO ONE-YEAR PRIOR TO THEIR RELEASE DATE.

A.D.C. ADMINISTRATIVE DIRECTIVE NO. 13-34 AUTHORIZES ELIGIBLE INMATES TO APPLY FOR ACT 679 UP TO (14) MONTHS PRIOR TO THEIR RELEASE DATE

KENNEDYS RELEASE DATE IS JULY 28, 2016. KENNEDY CONTACTED INSTITUTIONAL RELEASE OFFICER A. JONES ABOUT SCHEDULING AN MAY 2015 ACT 679 RELEASE HEARING.

A. JONES DENIED KENNEDYS APPLICATION. A. JONES REASON FOR DETERMINING THAT KENNEDY WAS INELIGIBLE FOR ACT 679 WAS DUE TO HIS "EXTENSIVE CRIMINAL HISTORY"

THE CRITERIA FOR AN OFFENDERS ACT 679 ELIGIBILITY IS DETERMINED BY PAROLE BOARD POLICY. A. JONES DOES NOT HAVE THE AUTHORITY TO ADD TO OR TAKE FROM THE ESTABLISHED CRITERIA. A. JONES DECISION AND ACTION WAS IN VIOLATION OF STATE LAW AND PAROLE BOARD POLICY.

A.C.A. § 16-93-211 (b)(1)-(2) STATES THAT A ACT 679 RELEASE DECISION WILL BE MADE CONSISTENT WITH RULES PROMULGATED BY THE PAROLE BOARD AND A.C.A. 16-93-211 (c)(1) STATES THAT AN ACT 679 RELEASE DECISION WILL BE BASED UPON ESTABLISHED CRITERIA

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THE RULES PROMULGATED BY THE PAROLE BOARD AND THE ESTABLISHED CRITERIA ARE CONTAINED IN THE ARKANSAS PAROLE BOARD MANUAL UNDER "EARLY RELEASE TO TRANSITIONAL HOUSING." ATTACHED HERETO IS A "GUIDELINES FOR ACT 679 OF 2005 RELEASES" WHICH CONTAINS THESE RULES AND CRITERIA.

SECTION "B" CONTAINS A LIST OF (6) SPECIFIC CATEGORIES OF INMATES WHO ARE NOT ELIGIBLE TO BE RELEASED UNDER THE ~~PROGRAM~~ ACT 679 PROGRAM. SECTION "A" STATES THAT IF AN INMATE IS NOT EXCLUDED BY SECTION "B" THEN HE SHALL BE ELIGIBLE.

AN INMATE'S NUMBER OF PAST OFFENSES OR CONFINEMENTS IS NOT ONE OF THE (6) CATEGORIES MAKING AN INMATE INELIGIBLE AND THUS, CANNOT BE CRITERIA USED TO DETERMINE INELIGIBILITY.

PAROLE BOARD POLICY IS PLAIN AND SIMPLE (6) CATEGORIES OF OFFENDERS ARE EXCLUDED AS BEING INELIGIBLE. PAROLE BOARD POLICY SPECIFICALLY STATES THAT ALL OTHER OFFENDERS ARE ELIGIBLE.

ATTACHED HERETO IS A "NOTICE OF ACT 679 INELIGIBILITY" FROM A. JONES. AS THE COMMISSION WILL SEE, THE CATEGORIES OF INMATES INELIGIBLE ACCORDING TO THIS FORM IS A VERBATIM REPRODUCTION OF PAROLE BOARD POLICY EXCEPT FOR No. 6. THERE IS NO "NO. 6" IN PAROLE BOARD POLICY. A. JONES ADDED THIS AND SHE VIOLATED PAROLE BOARD POLICY IN DOING SO.

KENNEDY SUBMITTED AN ADC GRIEVANCE IN THIS MATTER. HE WAS INFORMED BY THE GRIEVANCE OFFICER ~~BE~~ THAT HIS COMPLAINT WOULD BE REJECTED BECAUSE PAROLE MATTERS ARE NON-GRIEVABLE SUBJECT-MATTER

FOR VIOLATING STATE LAW, PAROLE BOARD POLICY AND UNLAWFULLY DEPRIVING KENNEDY OF THE OPPORTUNITY FOR EARLY RELEASE
KENNEDY ASKS FOR \$ 10,000

RESPECTFULLY SUBMITTED

JEREMY KENNEDY # 93061

P.O. BOX 1000

WRIGHTSVILLE AR ~~71283~~ 71283

A.C.A. § 16-93-211

West's Arkansas Code Annotated Currentness

Title 16. Practice, Procedure, and Courts

Subtitle 6. Criminal Procedure Generally (Chapters 80 to 104)

Chapter 93. Probation and Parole (Refs & Annos)

Subchapter 2. Parole Board (Refs & Annos)

§ 16-93-211. Early release to transitional housing facilities

- (a)(1) As used in this section, "transitional housing" means a program that provides housing for one (1) or more offenders who have been either:
- (A) Transferred or paroled from the Department of Correction by the Parole Board; or
 - (B) Placed on probation by a circuit court or district court.
- (2) An offender's home or the residence of an offender's family member shall not be considered a transitional housing facility for purposes of this section.
- (b)(1) To assist an offender who will be eligible for parole or transfer to successfully reintegrate into the community, the board is authorized to place the offender into approved transitional housing up to one (1) year prior to the offender's date of eligibility for parole or transfer.
- (2) Subject to conditions of release and consistent with rules promulgated by the board, placement in a transitional housing facility must be preceded by:
- (A) The provision of all applicable notices under § 16-93-615; and
 - (B) A hearing conducted by the board.
- (c) The decision to place an offender in transitional housing and the establishment of conditions of release by the board must be based on a reasoned, rational plan developed in conjunction with an accepted risk-needs assessment tool such that each placement decision is based on;
- (1) Established criteria; and
 - (2) A determination that there is a reasonable probability that an offender can be placed in a transitional housing facility without detriment to:
 - (A) The community; or
 - (B) The offender.
- (d) Conditions of release imposed by the board must at a minimum include a curfew requiring an offender placed in transitional housing to present himself or herself at a scheduled time to be confined in the transitional housing facility.
- (e) An offender placed in transitional housing by the board will be supervised by officers of the Department of Community Correction.
- (f) An offender who without permission leaves the custody of the transitional housing facility in which he or she is placed may be subject to criminal prosecution for escape, § 5-54-110--5-54-112.
- (g) Revocation of placement in transitional housing must follow the revocation proceedings established in § 16-93-705.

CREDIT(S)

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Parole Board Policy Manual

expedited by the ADC. This compiled list shall consist of those individuals who are within 6 months of becoming Transfer Eligible but may be expanded in scope as the need arises. This list shall contain at a minimum the names, ADC #, and county where these offenders are being held. Once this list is certified by the Board Chairman or their designee, it shall be transmitted to the ADC and they shall in turn schedule these offenders for intake.

Once these individuals are brought in to the Department, ADC shall notify DCC-Institutional Release Services of their Intake. DCC shall immediately begin the process of scheduling these offenders for the next upcoming Board. Offenders with non-discretionary convictions and those without an active conviction for a sexual offense shall be transmitted to the Board as a screening. Offenders whose conviction is discretionary and those who have an active conviction for a sexual offense shall be scheduled for a hearing. Offenders convicted of "Failure to Register" on a discharged registerable offense shall be scheduled for a screening.

Electronic Monitoring of Offenders

Based on the pre-established criteria in Arkansas Code Ann. §16-93-711, the Director of ADC or DCC will request the Board consider the release of certain inmates to electronic monitoring after they have served 120 days of their sentence. The Board will consider these offenders under the normal guidelines that apply to the screening process.

Inmates released under this section shall remain on electronic monitoring for at least 90 days or until their transfer eligibility date, whichever is sooner.

Early Release Program for Offenders to Transitional Housing Facilities – Act 679 of 2005

Offenders held in the Department of Correction (ADC), other than those excluded below, shall be eligible for early release to a transitional housing facility, or an equivalent entity, licensed by the Department of Community Correction (DCC) up to one (1) year prior to the offender's date of eligibility for parole or transfer. An offender's home or the residence of an offender's family member shall not be considered a transitional housing facility for the purposes of this program. Offenders released under this program must reside at an approved transitional housing facility until they reach their eligibility date.

It is determined that there is a reasonable probability that an offender within one (1) or more of the following categories cannot be placed in a transitional housing facility under the provisions of this program without posing a detriment to the community or the offender. Therefore an offender is not eligible for this program if:

1. They have failed to maintain Class I or II status at the time of petition or between the time of their hearing and release to the transitional housing facility.
2. They have served less than 6 months in the Department of Correction. Time served in the county jail shall not be counted toward program eligibility.
3. They have been convicted of any of the following:
 - a. Any homicide, §§ 5-10-101 – 5-10-105
 - b. Battery in the first degree, § 5-13-201
 - c. Domestic battering in the first degree, § 5-26-303
 - d. Kidnapping, § 5-11-102
 - e. Aggravated robbery, § 5-12-103

- f. Causing a catastrophe, § 5-38-202(a)
 - g. Engaging in a continuing criminal enterprise, § 5-64-405
 - h. Simultaneous possession of drugs and firearms, § 5-74-106
4. They have been convicted of any offense requiring registration under § 12-12-903 (Sex Offender Registration Act of 1997).
 5. They have been convicted of any offense determined by the Board to, by its nature or definition, involves violence, the threat of violence, the potential threat of violence, or the disregard for the safety of the lives of others.
 6. They have received a disciplinary or conviction (§§ 5-54-110 – 5-54-112) for behavior related to an escape, or an attempted escape, from the ADC, DCC, or a law enforcement agency.

Eligible offenders shall submit a written petition the Board for consideration under this program through their unit Institutional Release Officer. Once a petition has been received and the offender's eligibility has been determined, the offender shall be scheduled for an Act 679 hearing before the Board. Hearings scheduled under this program shall follow the distribution of all applicable notices under § 16-93-615 and all applicable policies established by the Board pertaining to a parole/transfer hearing (to include the right to appeal a denial of eligibility or release) and by the Department of Community Correction (DCC) pertaining to parole plan approval.

Inmates released under this program shall be supervised by officers of the DCC under the guidelines of the Act 679 Conditions of Release established by the Board (see Board Manual Attachments). The conditions must be based on a reasoned, rational plan developed in conjunction with validated risk-needs assessment and include at minimum a curfew requiring an offender placed in a transitional housing facility under this program to present themselves at a scheduled time to be confined in the transitional housing facility.

An offender who without permission leaves the custody of the transitional housing facility in which he or she is placed may be subject to criminal prosecution for escape, §§ 5-54-110 – 5-54-112. Facilities receiving an offender released under this program shall be provided with information by DCC on reporting an offender who without permission leaves the custody of the facility prior to their eligibility date.

Revocation of placement in transitional housing must follow the revocation proceedings established in § 16-93-705.

Supervision of Parolees

Supervision of parolees is done on behalf of the Board, by the Department of Community Correction. In consultation with the Board, DCC is authorized to establish written policies and procedures for the supervision of parolees. The supervision of parolees shall be based on evidenced-based practices including a validated risk/needs assessment. Decisions shall target the parolee's criminal risk factors with appropriate supervision and treatment designed to reduce the likelihood to reoffend. Further guidance for parole supervision can be found in Arkansas Code Ann. §16-93-712

Every parolee, while on release, shall be subject to the orders of the Board. Failure to abide by any of the conditions as instructed may result in revocation of his/her conditional release.

**Arkansas Parole Board
Two Union National Plaza Building
105 W. Capitol; 5th Floor
Little Rock, AR 72201-5731**

Guidelines for Act 679 of 2005 Releases
Effective March 2, 2013

- A. Offenders held in the Department of Correction (ADC), other than those excluded below, shall be eligible for early release to a transitional housing facility, or an equivalent entity, licensed by the Department of Community Correction (DCC), up to one (1) year prior to the offender's date of eligibility for parole of transfer. An offender's home or the residence of an offender's family member shall not be considered a transitional housing facility for the purposes of this program. Offenders released under this program must reside at an approved transitional housing facility until they reach their eligibility date.
- B. Offenders are not eligible to be released under the Act 679 Program if:
1. They have failed to maintain class I or II status at the time of application or between the time of their hearing and release to the transitional housing facility.
 2. They have served less than 6 months in the ADC. Time served in the county jail shall not be counted toward program eligibility.
 3. They have been convicted of any of the following:
 - a. Any homicide
 - b. Battery in the first degree
 - c. Domestic battering in the first degree
 - d. Kidnapping
 - e. Aggravated robbery
 - f. Causing a catastrophe
 - g. Engaging in a continuing criminal enterprise
 - h. Simultaneous possession of drugs and firearms
 4. They have been convicted of any offense requiring registration under the Sex Offender Registration Act of 1997.
 5. They have been convicted of any offense determined by the Parole Board to, by its nature or definition, involves violence, the threat of violence, the potential threat of violence, or the disregard for the safety of the lives of others.
 6. They have received a disciplinary or conviction for behavior related to an escape, or an attempted escape, from the ADC, DCC, or a law enforcement agency.
- C. Eligible offenders may submit a written petition (letter) to the Parole Board requesting consideration under this program through their Institutional Release Officer. Once a petition has been received and the offender's eligibility has been determined, the offender will be scheduled for an Act 679 hearing before the Parole Board. The final decision to release an offender will be made by the Parole Board. An offender should not assume they will be released simply because they meet the eligibility guidelines.
- D. Offenders may appeal a denial of eligibility or release under this program. the appeal must be made to the Parole Board within 60 days of the denial of their petition.
- E. An offender who without permission leaves the custody of the transitional housing facility in which he or she is placed may be subject to criminal prosecution for escape. Offenders who violate the Act 679 Conditions of Release will be subject to having their release revoked.

Notice of Act 679 Ineligibility

Inmate

Kennedy, Jeremy 930616

In response to your request regarding Act 679, you are not eligible due to the reason(s) listed below:

It is determined that there is a reasonable probability that an offender within one (1) or more of the following categories cannot be placed in a transitional housing facility under the provisions of this program without posing a detriment to the community or the offender. Therefore an offender is not eligible for this program if:

1. Offender is not up to one year prior to PE or TE date
2. Offender has failed to maintain Class I or II status at the time of petition or between the time of their hearing and release to the transitional housing facility.
3. Offender has served less than 6 month in the Department of Correction. Time served in the county jail shall not be counted toward program eligibility.
4. Offender has been convicted of any of the following:
 - a. Any homicide, §§ 5-10-101 – 5-10-105
 - b. Battery in the first degree, § 5-13-201
 - c. Domestic battering in the first degree, § 5-26-303
 - d. Kidnapping, § 5-11-102
 - e. Aggravated robbery, § 5-12-103
 - f. Causing a catastrophe, § 5-38-202(a)
 - g. Engaging in a continuing criminal enterprise, § 5-64-405
 - h. Simultaneous possession of drugs and firearms, § 5-74-106
5. Offender has been convicted of any offense requiring registration under § 12-12-903 (Sex Offender Registration Act of 1997).
6. Offender has been convicted of any offense determined by the Board to, by its nature or definition, involves violence, the threat of violence, the potential threat of violence or the disregard for the safety of the lives of others.
7. Offender has received a disciplinary or conviction (§§ 5-54-110 – 5-54-112) for behavior related to an escape, from the ADC, DCC or a law enforcement agency.
8. Other: Disciplinary Violations Extensive criminal history or your charge is considered discretionary. Former Status 7 with 15 charges.

A Jones
HCO Signature

3/10/15
Date

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

Arkansas
State Claims Commission

APR 24 2015

JEREMY KENNEDY #093061

RECEIVED
CLAIMANT

V.

Claim No. 15-0641-CC

ARKANSAS DEPARTMENT OF
COMMUNITY CORRECTION

RESPONDENT

MOTION TO DISMISS

Comes now Respondent, Arkansas Department of Community Correction (ACC), by and through counsel and for its Motion to Dismiss state:

1. Claimant, an inmate in the Arkansas Department of Correction, alleges that he has satisfied all the conditions necessary for parole, but that his parole has been wrongfully denied.
2. Claimant has no constitutional or legal right to transfer to parolee. *Michalek v. Lockhart*, 292 Ark. 301 (1987). Claimant cannot cite to a single case that has held that Arkansas parole statutes provide him a liberty interest in parole.
3. Claimant finds himself incarcerated as a result of violation of condition of his parole. Pursuant to A.C.A. § 19-10-204(b)(1)(A)(iii)(b), the Claims Commission lacks jurisdiction over claims against ACC by a person while that person is subject to conditions of parole or probation under Arkansas law. As Claimant's claim involves his failure to meet parole eligibility conditions, this forum lacks jurisdiction.
4. Pursuant to the foregoing, Claimant has failed to state a claim for which relief may be granted.

WHEREFORE, Respondent respectfully requests that Claimant's Complaint be dismissed and for all other relief to which it may be entitled.

Respectfully submitted,



M. WADE HODGE, #90072

General Counsel

Arkansas Department of Community
Correction

Two Union National Plaza, 3rd Floor

Little Rock, AR 72201

(501) 747-3783

wade.hodge@arkansas.gov

CERTIFICATE OF SERVICE

I, M. Wade Hodge, certify that on April 24, 2015, I forwarded a copy of the foregoing, by U.S. Mail, postage prepaid, addressed to the following:

Jeremy Kennedy #093061

P.O. Box 1000

Wrightsville, AR 71283



M. Wade Hodge

Arkansas
State Claims Commission
MAY 08 2015

RECEIVED

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

JEREMY KENNEDY #093061

CLAIMANT

V.

No. 15-0641-CC

ARKANSAS DEPT OF COMMUNITY
CORRECTION

RESPONDENT

RESPONSE TO MOTION TO DISMISS

1. RESPONDENT MISTATES THE LAW. A.C.A. § 19-10-204(b) states that the Claims Commission has no jurisdiction over the A.C.C. for acts committed by a person while he is on parole. In other words, if I wrong someone while I am on parole, the A.C.C. cannot be held liable for my actions. This statute in no way confers any sort of blanket immunity for wrongs committed by A.C.C. agents against someone on parole.
2. Claimant is not on parole. I received a administrative parole revocation. Parole violations are for 6 months with an automatic release hearing which I have never received because I also received a New 30 yr. sentence which essentially "ate up" my Parole

Revocation. A review of my status on the Dep't of Corrections website will show me serving a 20 year sentence, not a parole revocation

3. According to the Respondent, A.C.A. § 19-10-204 states that the Commission lacks jurisdiction over claims against ACC by a person while that person is subject to conditions. This is a blatant misstatement of the law but even if it was right, it would still be irrelevant because I am not on parole nor am I subject to conditions of parole
4. In paragraph no. 2, The Respondent states that I have no constitutional or legal right to parole. It states that I cannot cite a single case showing that Arkansas Parole statutes provide me a liberty interest in parole. In support, it cites a 1987 case.
5. In 1993, The Arkansas General Assembly completely rewrote Arkansas Parole statutes. A 1987 case is under the old law and does not apply.
6. Constitutional rights or liberty interests are inapplicable and irrelevant. This complaint does not allege violations of the constitution. It

alleges violations of Administrative Regulations

7. Pursuant to Arkansas Administrative Law, an state agency must follow its own administrative regulations. Institutional Release Officer Aquita Jones, an ACC agent, did not

8. A.C.A. § 16-93-211(b) states that the parole board is authorized to place the offender into approved transitional housing ... consistent with rules promulgated by the Board

9. Attached hereto are pages 11-12 of the Arkansas Parole Board Policy Manual which contain the Act 679 rules (i.e. "rules promulgated by the Board"). It plainly states that offenders held in the ADC other than those excluded below shall be eligible for early release to a transitional housing facility. There are (6) categories of criteria that determine what offenders are "those excluded below". I do not fall in any of these categories and thus, by policy, am eligible

10. The same rules state that once an offenders eligibility has been determined, the offender shall be scheduled for an Act 679 hearing

10. Claimant does not claim that he has a legal right to Act 679 Release. Only that he has a legal right to have his eligibility determined in compliance with the established criteria contained in Parole Board Regulations.
11. A.C.C. employee Aquita Jones did not. No matter how many times Claimant has been ~~tea~~ incarcerated, this factor is simply not part of established criteria. Kennedy is certain that had he received a Act 679 hearing in compliance with policy that his history would certainly be a factor considered by the Board. It might have even resulted in a denial. But, by law and by Policy, that is the Parole Board's decision to make, not Aquita Jones or the ACC.

WHEREFORE, Claimant respectfully requests that the Respondent's Motion to Dismiss be denied.

Respectfully Submitted
Jeremy Kennedy #93061
Wrights ville Unit

I, Jeremy Kennedy, certify that on May 5, 2015 I forwarded a copy of this document to the Respondent.



STATE CLAIMS COMMISSION Docket
OPINION

Amount of Claim \$ 10,000.00

Claim No. 15-0641-CC

Jeremy Kennedy, #093061 Claimant
vs.

Attorneys
Pro se Claimant

AR Dept. of Community Correction
State of Arkansas Respondent

M. Wade Hodge, Attorney
Respondent

Date Filed March 24, 2015

Type of Claim Failure to Follow Procedure

FINDING OF FACTS

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss" for reasons set forth in paragraphs 1-4 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss" for reasons set forth in paragraphs 1-4 contained in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

Date of Hearing May 14, 2015

Date of Disposition May 14, 2015

[Signature] Chairman
[Signature] Commissioner
[Signature] Commissioner

**Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33 of 1997 and as found in Arkansas Code Annotated §19-10-211.

**BEFORE THE ARKANSAS GENERAL ASSEMBLY
CLAIMS COMMISSION REVIEW SUB-COMMITTEE**

Arkansas Claims Comm.
JUN 23 2015
RECEIVED

JEREMY KENNEDY ADC #093061

CLAIMANT

V.

CLAIM NO. 15-0641-CC

**ARKANSAS DEPARTMENT OF COMMUNITY
CORRECTION**

RESPONDENT

APPEAL OF DISMISSAL

Comes now, Claimant Jeremy Kennedy, Pro Se, requesting the Claims Commission review Sub-Committee to reverse the May 14, 2015 Decision of the Claims Commission which granted “the Respondent’s “Motion to Dismiss” for reasons set forth in paragraphs 1-4 contained in the Motion” because this dismissal is clearly contrary to law and based upon fraudulent legal argument.

In paragraph No.-1, Motion to Dismiss, the Respondent stated that Claimant an inmate in the Arkansas Department of Correction, alleges that he has satisfied all the conditions necessary for parole, but that his parole has been wrongfully denied.

This is not correct. Claimant’s Complaint states that he is eligible for release to a transitional housing facility pursuant to A.C.A. § 16-93-211. This Statute requires such release decision to be made consistent with rules promulgated by the Parole Board. Those rules, contained in the Parole Board Manual contain procedures which inarguable make Claimant eligible for release consideration under the provision of this program. Agents of the Respondent agency failed to comply with these procedures and declared Claimant ineligible, and in doing so, denied Claimant a release consideration hearing.

In paragraph 2, Motion to Dismiss, the Respondent stated that Claimant had no constitutional or legal right to transfer to Parole. **Michalek v. Lockhart** 292 Ark. 301 (1987). Claimant cannot cite a single case that has held that Arkansas Parole Statutes provide him a liberty interest in parole.

Claimants complaint does not allege violations of constitutional rights (i.e. liberty interests) Thus, the proceeding paragraph is mostly irrelevant. Once all the constitutional matter is removed, all that remain is an assertion that Claimant has no legal right to transfer to Parole and, in support, a citation of a 1987 case.

In **Michalek** the Chief Justice's opinion states that inmates have no *Constitutional* right or entitlement to parole (citing **Stuart v. Lockhart** 587 F.Supp. 1 (E.D. Ark. 1983) and **Greenholtz v. Nebraska Penal Inmates** 442 U.S. 1, 7, 99 S.Ct. 2100, 60 L.Ed.2d 668 (1979)). While the Court in **Greenholtz** did state that prisoners did not have a constitutional or inherent right to parole, it did state a prisoner being considered for parole is "entitled to some measure of constitutional protection" since the statute created an expectation of release on parole "unless" the statutory reasons for parole denials are found. 442 U.S. at 12 and in **Michalek**, The Court specifically stated that with regards to Arkansas Parole, "Parole status is governed by the parole statute in effect at the time the crime was committed" (citing **Bosnick v. Lockhart**, 283 Ark. 206, 672 S.W.2d 52 (1984)).

This Complaint alleges a violation of A.C.A. § 16-93-211 and the accompanying procedures promulgated in the Arkansas Parole Board Policy Manual and the Respondents Motion to Dismiss at no time denies this allegation.

In paragraph 3, Motion to Dismiss, the Respondent states Claimant finds himself incarcerated as a result of violation of condition of his parole. Pursuant to A.C.A. § 19-10-204(b) (1)(A)(iii)(b), the Claims Commission lacks jurisdiction over claims against ACC by a person while that person is subject to condition of parole or probation under Arkansas law. As Claimant's claim involves his failure to meet parole eligibility conditions, this forum lacks jurisdiction.

This statement is a deliberate (and apparently successful) attempt a "committing a fraud upon the judiciary" which by itself is a violation of Arkansas Model Code of Conduct for Attorneys.

The cited Statute actually states that the Claims Commission lacks jurisdiction over "(b) claims against the Department of Community Correction for acts committed by a person while

that person is subject to conduction of parole or probation under Arkansas law”. Since this claim is not about acts committed by a parolee, nor is claimant currently subject to the conditions of parole, it is immaterial to this claim.

Finally, in paragraph No. 4, Motion to Dismiss, the Respondent states pursuant to the foregoing, claimant has failed to state a claim for which relief may be granted.

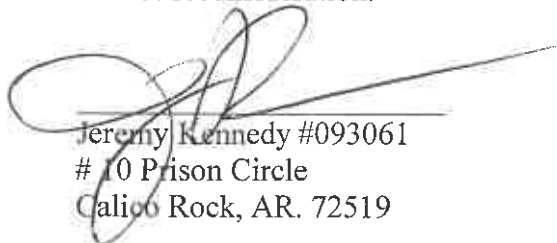
The Rules and procedures of the Claims Commission State that all actions and hearings shall be governed by the Arkansas Rules of Civil Procedure. Pursuant to Rule 12(b)(6) Ar.R.Civ. P., when considering a Motion to Dismiss for failure to state a claim, they must look only to the allegations contained in the complaint and accept them as true. Claimants claim alleges that the Respondent failed to follow procedures and violated regulations which resulted in injury. If true, this inarguably states a claim upon which relief could be granted.

CONCLUSION

The Motion to Dismiss contains no argument that would support a dismissal its assertment that the commission lacks jurisdiction is based on a deliberate misstatement of law. Its assertment that claimant has no legal right to transfer to parole is based on a Arkansas Supreme Court opinion which states that parole status is governed by the parole statute in effect at the time.

With regard to this claim, the parole statute that is in effect and would govern is A.C.A. § 16-93-211. This complaint alleges that the Respondent violated this statute and at no time has the respondent denied this allegation.

WHEREFORE, claimant respectfully requests that the commission’s grant of the Motion to Dismiss be reversed and that the claim be sent back to the commission for reconsideration.



Jeremy Kennedy #093061
10 Prison Circle
Calico Rock, AR. 72519