



STATE OF ARKANSAS
BUREAU OF
LEGISLATIVE RESEARCH

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**Claims Review/Litigation Reports Oversight Subcommittee
of the Arkansas Legislative Council
Claims Subcommittee of the Joint Budget Committee
Statement of Redaction of Confidential Information**

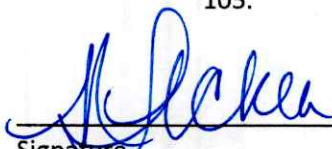
Style of Case: Kwasi McKinney v. Arkansas Division of Correction

Docket Number: Claim No. 200909

Type of Matter (please circle one): Claims Review Litigation Reports Oversight

As indicated by my signature below:

- I acknowledge that documents submitted to the Subcommittee may be published or disseminated by the Subcommittee for purposes of its consideration and those documents that are published or disseminated by the Subcommittee will be considered subject to disclosure under the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq.
- I further acknowledge that it is my responsibility to review each document submitted to the Subcommittee and make any necessary redactions.
- I certify that I have reviewed each document submitted herein and have redacted all confidential information excluded from public access by Arkansas Supreme Court Administrative Order No. 19, § VII, and the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq., including without limitation an individual's home address, personal email address, personal phone number, date of birth, social security number, information identifying a minor child, medical records, and financial account numbers.
- If a redacted document has been submitted, I have also included a non-redacted copy of the same document that may be considered exempt from disclosure under Arkansas Code § 25-19-105.



Signature

Arkansas State Claims Commission, Attorney Specialist
Title and Agency

Mika Tucker
Name

February 29, 2024
Date

From: [Maritza Haynes](#)
To: [Thomas Burns](#); [Roni Gean](#)
Cc: [Kathryn Irby](#)
Subject: CLAIM: Kwasi McKinney v. ADC, Claim No. 200909
Date: Thursday, March 12, 2020 11:21:00 AM
Attachments: [Kwasi McKinney v. ADC, Claim No. 200909.pdf](#)

Hello,

Please see attached. Contact Kathryn Irby with any questions.

Thank you,

Maritza

Maritza S Haynes
Arkansas State Claims Commission
101 East Capitol Avenue
Suite 410
Little Rock, Arkansas 72201
501-682-2819
Maritza.Haynes@arkansas.gov

ARKANSAS STATE CLAIMS COMMISSION

(501)682-1619
FAX (501)682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, AR 72201-3823

March 12, 2020

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602

(via email)

RE: ***Kwasi McKinney v. Arkansas Division of Correction***
Claim No. 200909

Dear Mr. Burns,

Enclosed please find a copy of the above-styled claim filed against the Arkansas Division of Correction. Pursuant to the Arkansas Rules of Civil Procedure, as well as Claims Commission Rule 2.2, you have **thirty days from the date of service** in which to file a responsive pleading.

Your responsive pleading should include your agency number, fund code, appropriation code, and activity/section/unit/element that this claim should be charged against, if liability is admitted, or if the Claims Commission approves this claim for payment. This information is necessary even if your agency denies liability.

Sincerely,

Kathryn Irby

ES: mshaynes

Enclosure

cc: Kwasi McKinney (ADC [REDACTED]) (w/encl.)

Note to Claimant or Claimant's counsel: The Claims Commission copied you on this correspondence to provide you with confirmation that your claim has been processed and served upon the respondent agency.

MAR 04 2020

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

RECEIVED

- Mr. Mrs. Ms. Miss

Kwasi McKinney, Claimant

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces. Claim No., Date Filed, Amount of Claim \$, Fund.

COMPLAINT

Kwadi McKinney

the above named Claimant, of

(Name)

(Street or R.F.D. & No.)

(City)

County

represented by

(Legal Counsel, if any, for Claim)

(State) (Zip Code) (Daytime Phone No.)

of (Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.) says:

State agency involved: Arkansas Department of Correction Amount sought: \$5,000

Month, day, year and place of incident or service: October 17, 2019

Explanation: On October 17, 2019 approximately 9:30 p.m I was removed from my cell (Max 4-41) and placed in isolation on such date. C/O Smith and C/O Mallard packed my personal property in one property bag, a blanket and laundry bags and placed it in the property room.

Pursuant to protocol due to seizure and handling my property both officers were to inventory my property but failed to do so, when I was released from isolation I only was issued one property bag but not the other property that C/O Smith and C/O Mallard knows that I had

Some of the items that are missing is: Trial transcript, Case File, MP4, Mini Tablet, GLX digital radio, mirror, bowls, cups, batteries, pillow cases, sheets, boxers, boil bags, boots, towels, sweat pants, t-shirts, comb, laundry bags, lip chap, deodorant, toothpaste and more. C/O Smith and Mallard can vouch that I had all these items in my property.

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. Kwasi McKinney (Print Claimant/Representative Name)

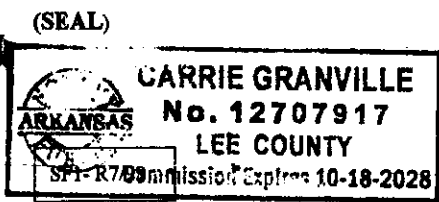
Kwasi McKinney (Signature of Claimant/Representative)

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

on this 24 day of 2 2020 (Date) (Month) (Year)

Carrie Idouere (Notary Public)

My Commission Expires: 10 18 2028 (Month) (Day) (Year)



IGTT430
3GD

Attachment VI

INMATE NAME: McKinney, Kwasi A.

ADC #: [REDACTED]

GRIEVANCE # [REDACTED]

Arkansas
19-02966
Prisons Commission

MAR 04 2020

CHIEF DEPUTY/DEPUTY/ASSISTANT DIRECTOR'S DECISION

You allege, " While housed in Max4-41 cell I was placed on behavioral control and removed from housing area and places in isolation on such day at or around 9:30pm c/o Smith and c/o Mallard entered my cell and packed my personal property and pursuant to protocol both officer due to seizure and handling my property both officers were to inventory such property. C/o Smith is a witness that I had an excess amount of property in property bag(s) and a blanket full that couldn't fit in a property bag. I am no longer under such status and am in need of obtaining all of my property. C/o Smith know where my property is and admits that he does. I am being unjustifiable denied my property when I am of no statue that is to withhold the remaining bags of my property. I was only issued one property bags but not the other bags that c/o Smith knows that I had.

RECEIVED

On 1/6/2020, Warden Lay responded, " Documentation shows that you received all of your property (for which you signed for), on 11/22/2019. Per Officer Jenkins (max property) all of your property was inventoried and returned to you. Without further evidence I find your compliant has no merit.

Your appeal was received on 1/14/2020. After reviewing your appeal and all supporting documentation, I find Property Officer Ms. Jenkins states in part, " All property this inmate had was inventoried and returned to him." Staff denies your allegations. Records indicate you signed for your property on 11/22/2019. Without further evidence I find your appeal is without merit.

Appeal denied

[Signature box]

Director

[Handwritten Signature]

Date

2-12-20

UNIT LEVEL GRIEVANCE FORM (Attachment I)

Unit/Center [REDACTED]

Name Kwasi McKamey

ADC# [REDACTED] Brks # 6-29 Job Assignment R/H

FOR [REDACTED] ONLY
GRV. # <u>19-02966</u>
Date Received: <u>12-5-19</u>
GRV. Code #: <u>505</u>

11-25-19 (Date) STEP ONE: Informal Resolution

12-3-19 (Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)

If the issue was not resolved during Step One, state why: I still haven't received my property.

_____, (Date) EMERGENCY GRIEVANCE (An emergency situation is one in which you may be subject to a substantial risk of physical harm: emergency grievances are not for ordinary problems that are not of serious nature). If you marked yes, give this completed form to the designated problem-solving staff, who will sign the attached emergency receipt. In an Emergency, state why: _____

Is this Grievance concerning Medical or Mental Health Services? _____ If yes, circle one: medical or mental

BRIEFLY state your one complaint/concern and be specific as to the complaint, **date**, place, name of personnel involved and how **you** were affected. (Please Print): While housed in Max #4-41 cell I was placed on Behavioral Control and removed from such programs area and placed in isolation.

On such day out on around 9:30 p.m. '10 Smith and '10 Mallet entered my cell and packed my personal property and pursuant to Protocol, both officers were to seize and handling my property, both officers were to inventory such property.

'10 Smith is a witness that I had an excess amount of property in property bags and a blanket full that could not fit in a property bag.

I am no longer under such status and am in need of obtaining all of my property. '10 Smith knows where my property is and admits that he does.

I am being unjustifiably denied my property when I am of no status that is to withhold the remaining bags of my property. I was only issued one property bag but not the other bags that '10 Smith knows that I had.

JAN 14 2020

Kwasi McKamey
Inmate Signature

INMATE GRIEVANCES SUPERVISOR 12-25-19
ADMINISTRATION BUIL Date

If you are harmed, threatened because of your use of the grievance process, report it immediately to the Warden or designee.

THIS SECTION TO BE FILLED OUT BY STAFF ONLY

This form was received on 12/25/19 (date), and determined to be **Step One** and/or an Emergency Grievance _____ (Yes or No). This form was forwarded to medical or mental health? _____ (Yes or No). If yes, name of the person in that department receiving this form: _____ Date _____

Sgt A Walker [REDACTED] Sgt Walker 12/25/19
PRINT STAFF NAME (PROBLEM SOLVER) ID Number Signature Date Received

Describe action taken to resolve complaint, including dates: This was placed in property room supervisor [REDACTED]

Sgt A Walker 12/11/19 Kwasi McKamey 12-2-19
Staff Signature & Date Returned Inmate Signature & Date Received

This form was received on 12/4/19 (date), pursuant to **Step Two**. Is it an Emergency? _____ (Yes or No).

Staff Who Received Step Two Grievance: [REDACTED] Date: 12/4/19

Action Taken: forward to gm (Forwarded to Grievance Officer/Warden/Other) Date: _____

If forwarded, provide name of person receiving this form: property director Date: 1-9-20

DISTRIBUTION: YELLOW & PINK - Inmate Receipts; BLUE - Grievance Officer; ORIGINAL - Given back to Inmate after Completion of Step One and Step Two.

ADC INMATE PERSONAL PROPERTY INVENTORY RECORD (Code: S=STORAGE K=KEEP IN POSSESSION I=ISSUED F=FEMALE M=MALE) F-841-1

Transfer 48 on 48 off Medical Court Other
 Inmate's Name: K.H. Kinney ADC# [redacted] Receiving Institution: _____

Non-Expendable Items

ITEM (# allowed)	#REC/SEN	CODE	#RET'D	DESCRIPTION	ITEM	#REC/SENT	CODE	#RET'D	DESCRIPTION
ADA Compliance Item	1				Nail Clippers (1)	1			
All Books (10)	1				Personal Mail	1			
Bathrobe (F, 2)	1				Photos (5)	1			
Bowls	1	S			Radio (1)	1	S		MP3
Bras/Panties (F-I 3 ea + 5)	1				Religious Material	1	K		Bible
Comb (M, I 1)	1				Religious Medal (1)	1			
Cup	1	S			Ring (1)	1			
Dentures (1)	1				Shoes wk rel (1)	1			
Depilatory preparation (1)	1				Shower Shoes (1)	1			
Ear buds/earphone(1)	1	S			Soap Dish	1	S		
Earplugs	1				Socks (1 3 + 2)	1	S		
Eyeglasses/Contacts (1)	1	S/K			Stockings	1			
Gloves (1)	1				Sweat Pants (1)	1	S		
Gym Shoes (1)	1	K	1	Reebok / Reebok	Sweat Shirts (1)	1	S		
Hair Brush (1)	1				Toothbrush holder	1	S		
Laundry Bag (1 1 + 1)	1	K/S			Undershirts	1	S		
Legal Mail/Transcript	1				Undershorts (M,I-2 3)	1	K		
Magazines (3 ea)	1	S			Watch-Wrist (1)	1	S		no band timer

Expendable Items (All Hygiene items limited to 2 items of each type or one pack if sold in a pack. Possession is limited to maximum in a pack)

Batteries (4)	1			AA BATTERIES	Flex Pens	1			
Beauty Aid products	1				Food items	1	S		ORANGE
Denture adhesive (2)	1				Hair Dressing (2)	1	K		
Deodorant (2)	1	K			Shampoo (2)	1	K		
Envelopes (10)	1				Shaving Cream (2)	1			

Other (All Hygiene items limited to 2 items of each type or one pack if sold in a pack. Possession is limited to maximum in a pack)

Blanket	1	K			Keypointer	1	S		broken
Shirts	1	K			Deodorant	1	K		
pillow	1	K							

State Issued Items

Brogans-shoes (1pr)	1				Razor-Safety (2)	1			
Pants (3 pr)	1	K			Shirts (3)	1	K		clean S
Cap/Hat (1)	1				Soap	1	K		
Canvas Shoes (M,1)	1				Thermals (2 sets)	1	K		
ADC Hand Book	1				Bath Towel as needed	1	K		
Toothbrush (1)	1	K			Toothpaste (2)	1	K		low S
Jacket/Coat (1)	1				Washcloth (1)	1	K		

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

Printed Name / Sign Name / Badge # of Official Receiving Property _____ Date _____ Location Stored _____ Inmate's Signature & ADC# / Witness, if refuses _____ Date _____

Printed Name / Sign Name / Badge # of Official Returning Property _____ Date _____ Location Stored _____ Inmate's Signature & ADC# / Witness, if refuses _____ Date _____

From: [Roni Gean](#)
To: [ASCC Pleadings](#)
Cc: [Thomas Burns](#)
Subject: McKinney 200909 - Answer 03-12-2020
Date: Thursday, March 12, 2020 2:07:22 PM
Attachments: [Kwasi McKinney v. ADC Claim No. 200909 Answer 03-12-2020.pdf](#)

Attached please find our response in this matter.

Roni Gean

Legal Support Specialist
ADC Division of Correction
6814 Princeton Pike, Pine Bluff, AR 71603
Phone: (870) 267-6844; Fax: (870) 267-6373
roni.gean@arkansas.gov

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From: [Thomas Burns](#)
To: [ASCC Pleadings](#)
Cc: [Roni Gean](#)
Subject: Kwasi McKinney v ADC claim 200909
Date: Monday, April 13, 2020 9:35:12 AM
Attachments: [doc03502220191209084157.pdf](#)
[4217_001.pdf](#)

Motion to Dismiss and attachment.

-TB

Thomas Burns
General Counsel
Arkansas Department of Corrections
Division of Correction
6814 Princeton Pike
Pine Bluff Arkansas 71611-8707
Phone: (870) 267-6845
Fax: (870) 267-6373
thomas.burns@arkansas.gov

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Transfer: 48 on ADC# _____ Punitive _____ Medical _____ Court _____ Other _____
 Inmate's Name: K. H. Kinnear Receiving Institution: _____
 Non-Expendable Items _____

ITEM (# allowed)	#REC/SEN	CODE	#RET'D	DESCRIPTION	ITEM	#REC/SENT	CODE	#RET'D	DESCRIPTION
ADA Compliance Item					Nail Clippers (1)				
All Books (10)					Personal Mail				
Bathrobe (F, 2)					Photos (5)				
Bowls					Radio (1)				
Bras/Panties (F-1 3 ea + 5)					Religious Material				
Comb (M, I 1)					Religious Medal (1)				
Cup					Ring (1)				
Dentures (1)					Shoes wk rel (1)				
Depilatory preparation (1)					Shower Shoes (1)				
Ear buds/earphone (1)					Soap Dish				
Earpieces					Socks (1 3 + 2)				
Eyeglasses/Contacts (1)					Stockings				
Gloves (1)					Sweat Pants (1)				
Gym Shoes (1)					Sweat Shirts (1)				
Hair Brush (1)					Toothbrush holder				
Laundry Bag (1 1+1)					Undershirts				
Legal Mail/Transcript					Undershorts (M, I-2 + 3)				
Magazines (3 ea)					Watch-Wrist (1)				

Expendable Items (All Hygiene items limited to 2 items of each type or one pack if sold in a pack. Possession is limited to maximum in a pack)

Batteries (4)					Flex Pens				
Beauty Aid products					Food items				
Denture adhesive (2)					Hair Dressing (2)				
Deodorant (2)					Shampoo (2)				
Envelopes (10)					Shaving Cream (2)				

Other (All Hygiene items limited to 2 items of each type or one pack if sold in a pack. Possession is limited to maximum in a pack)

State Issued Items

Broegans-shoes (1 pr)					Razor-Safety (2)				
Pants (3 pr)					Shirts (3)				
Cap/Hat (1)					Soap				
Canvas Shoes (M, 1)					Thermals (2 sets)				
ADC Hand Book					Bath Towel as needed				
Toothbrush (1)					Toothpaste (2)				
Jacket/Coat (1)					Washcloth (1)				

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

Printed Name / Sign Name / Badge # of Official Receiving Property: _____ Date: _____
 Location Stored: _____

Inmate's Signature & ADC# / Witness, if refuses: _____ Date: _____
 Inmate's Signature & ADC# / Witness, if refuses: _____ Date: _____

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI McKINNEY (ADC [REDACTED])

CLAIMANT

v

NO. 200909

ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTION

RESPONDENT

RESPONDENT'S MOTION TO DISMISS

Comes Now the Respondent, Arkansas Department of Corrections (ADC), for its Motion to Dismiss, states:

1. The inmate's claim should be dismissed pursuant to the Arkansas Rules of Civil Procedure (ARCP) 12(b)(6) as it fails to state facts upon which relief can be granted.
2. On a motion to dismiss pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure the courts treat the facts alleged in complaints as true and view them in the light most favorable to the plaintiff. *Dockery v Morgan, 2011 Ark. 94*. "However, [Arkansas's] rules require fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle the pleader to relief." *Id.* The Court should "treat only the facts alleged in the complaint as true but not the plaintiff's theories, speculation, or statutory interpretation." *Id.*
3. Legal conclusions, unsupported conclusions, and unwarranted inferences must be ignored and fail to withstand a Rule 12(b)(6) motion. *See Farm Credit Svcs. v American State bank, 339 F.3d 764 (8th Cir. 2003)*. A pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief. *Ashcraft v Iqbal 556 U.S. 662 (2009)*. Although detailed factual allegations are not required, more than "unadorned, the-defendant-unlawfully-harmed-me-accusations" are required. *Id.* To survive a motion to dismiss, a complaint must contain sufficient factual matter that, when accepted as true, state a claim to

relief that is plausible on its face. *Id.* A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

4. The inmate seeks the sum of \$5000.00 for alleged Missing Property. Although inmate seeks an award of damages (\$5000.00), he fails to plead any basis for an award of damages, and he fails to give the Arkansas Claims Commission any rational basis beyond mere speculation of the damages. Damages are an essential element of a tort claim and there must an allegation of sufficient facts to satisfy the damages element or the case is subject to a motion to dismiss. *Wallis v. Ford Motor Company*, 362 Ark. 317, 208 S.W. 3d 153 (2008). The inmate’s claim, even if true, does not support a claim for monetary relief.

5. Even if the inmate were to plead with more specificity, he would still not be able to prevail. The party claiming damages has the burden of proving those damages beyond speculation. *Minerva Enterprises v. Howlett*, 308 Ark. 291, 824 S.W. 2d 377 (1992). Even taking the inmate’s allegations true as pleading, and giving him the benefit of every possible inference, his mere inconvenience of alleged wrongdoing can never render a claim that is anything but speculation.

6. Pro Se parties are not given special treatment and are held to the same standard as a licensed attorney. *Pressler v. Ark. Publ. Serv. Comm’n*, 2011 Ark. App. 512, at 9, 385 S.W.3d 349, 355 (citing *Elder v. Mark Ford & Assocs.*, 103 Ark. App. 302, 288 S.W.3d 702 (2008)). The Claims Commission notes that under Arkansas law, a claimant choosing to represent himself is held to the same standard as an attorney. *Michael Pickens v ADC claim 190793 (ASCC 2019)*.

7. Whether a plaintiff is represented by counsel or is appearing pro se, his complaint must allege specific facts sufficient to state a claim. See *Martin v Sargent*, 780 F.2d 1334, 1337 (8th Cir. 1985).

8. A complaint must state facts, not mere conclusions, in order to satisfy the requirements of Rule 8 of the Arkansas Rules of Civil Procedure. *Doe v Weiss*, 2010 Ark. 150.

9. In reviewing whether a complaint is subject to dismissal, the Court must accept as true all factual allegations in the complaint, but is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* “Nor does a complaint suffice if it ‘tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Id.* (quoting *Twombly*, 550 U.S. at 557). Rather, a complaint must plead “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 556). A well pleaded complaint may proceed even if it appears that actual proof of those facts is improbable and that recovery is very remote and unlikely. *Twombly*, 550 U.S. at 556. A complaint cannot, however, simply leave open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery. *Id.* at 561. Rather, the facts set forth in the complaint must be sufficient to nudge the claims across the line from conceivable to plausible. *Id.* at 570. “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged –but it has not ‘show[n]’ – ‘that the pleader is entitled to relief.’” *Iqbal*, 556 U.S. at 679 (quoting *Fed.R.Civ.P. 8(a)(2)*).

10. The Plausibility standard is not akin to a “probability requirement” but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads

facts that are “merely consistent with” a defendant’s liability, it” stops short of the line between possibility a plausibility of entitlement to relief” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)

11. The inmate is currently housed at the [REDACTED] of the ADC. He is serving a 154-year sentence on a conviction of Simultaneous Possession of Drugs/Firearms and other crimes.

12. The inmate claims that he was not given his property back when released from isolation.

13. The inmate attached a F-841-1 to his complaint.

14. The Inmate signed the exact F-841-1 when he went to isolation and when his was released. *See attached Ex A.*

15. The inmate filed a grievance EAM19-02966 which was found without merit after two levels of review. *See attached to Inmate complaint*

16. This Inmate is clearly not telling the truth and has signed a complaint that is not only baseless but perjured on its face. The ADC should be awarded fees and costs for this blatant attempt to get monies. This is clearly Unclean Hands!!

17. The inmate has filed a complaint that he knows is in bad faith and not supported by the facts. The Commission should award the ADC fees and costs for having to respond to this baseless complaint.

18. This same claim, if presented to a court of general jurisdiction would, as a matter of law, be dismissed.

19. “The commission shall make no award for any claim which, as a matter of law, should be dismissed from a court of law or equity for reasons other than sovereign immunity.” Ark. Code Ann. § 19-10-204(3)(A) (West Supp. 2015). “Specifically, if the facts of a given

claim would cause the claim to be dismissed as a matter of law from a court of general jurisdiction, then the commission shall make no award on the claim.” Ark. Code Ann. § 19-10-204(3)(B) (West Supp. 2015). The claimant has not been damaged and only makes mere assertions that he has been damages. Without damages a Court would dismiss the claim in its entirety.

WHEREFORE, the Respondent prays that the motion be granted and the complaint dismissed; for their attorney’s fees and costs; and all other just and proper relief to which they may be entitled.

Respectfully submitted,



Thomas Burns (02006)
Legal Department
Division of Correction
6814 Princeton Pike
Pine Bluff, AR 71602
(870)267-6845 Office
(870)267-6373 Facsimile
thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of the above pleading has been served this 13th day of April 2020, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Kwasi McKinney ([REDACTED])
[REDACTED]



Thomas Burns

Transfer 48 of ADC Punitive Medical Court Other Receiving Institution:

Inmate's Name: K. H. Johnson

Non-Expendable Items

ITEM (# allowed)	#REC/SEN	CODE	#RETD	DESCRIPTION	ITEM	#REC/SENT	CODE	#RETD	DESCRIPTION
ADA Compliance Item					Nail Clippers (1)				
All Books (10)					Personal Mail				
Bathrobe (F, 2)					Photos (5)				
Bowls					Radio (1)				
Bras/Panties (F-1-3 ea + 5)					Religious Material				
Comb (M, 1)					Religious Medal (1)				
Cup					Ring (1)				
Dentures (1)					Shoes wk rel (1)				
Depilatory preparation (1)					Shower Shoes (1)				
Ear buds/earphone(1)					Soap Dish				
Earplugs					Socks (1-3 + 2)				
Eyeglasses/Contacts (1)					Stockings				
Gloves (1)					Sweat Pants (1)				
Gym Shoes (1)					Sweat Shirts (1)				
Hair Brush (1)					Toothbrush holder				
Laundry Bag (1 + 1)					Undershirts				
Legal Mail/Transcript					Undershorts (M, 1-2 + 3)				
Magazines (3 ea)					Watch-Wrist (1)				
Expendable Items (All Hygiene items limited to 2 items of each type or one pack if sold in a pack. Possession is limited to maximum in a pack)									
Batteries (4)					Flex Pens				
Beauty Aid products					Food Items				
Denture adhesive (2)					Hair Dressing (2)				
Deodorant (2)					Shampoo (2)				
Envelopes (10)					Shaving Cream (2)				
Other (All Hygiene items limited to 2 items of each type or one pack if sold in a pack. Possession is limited to maximum in a pack)									
State Issued Items									
Biogans-shoes (1pr)					Razor-Safety (2)				
Pants (3 pr)					Shirts (3)				
Cap/Hat (1)					Soap				
Canvas Shoes (M, 1)					Thermals (2 sets)				
ADC Hand Book					Bath Towel as needed				
Toothbrush (1)					Toothpaste (2)				
Jacket/Coat (1)					Washcloth (1)				

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

Printed Name / Sign Name / Badge # of Official Receiving Property

Date

Location Stored

Printed Name / Sign Name / Badge # of Official Returning Property

Date

Location Stored

Inmate's Signature & ADC# / Witness, if refuses

Date



Before The Arkansas State Claims Commission.

Kwasi McKinney # [REDACTED]

Arkansas
State Claims Commission

v.

No. 200909

MAY 26 2020

Arkansas Department of Correction

Respondent
RECEIVED

Division of Correction

Response to
Respondent's Motion to Dismiss

Comes Now the Claimant, Kwasi McKinney [REDACTED], for ~~his~~
~~motion~~ his Response to Respondent's Motion to Dismiss, states:

1. Mr. McKinney claim should not be dismissed for the following reasons:

A) The officers (C/O Mallard and C/O Smith) violated protocol by not properly packing my property and inventorying it because they was the officers that seized my property

B) The property that I signed for was only one bag that C/O Jenkins bring to me and I immediately advised her that this was not all my property.

C) C/O Mallard and Smith can witness that I had more property than one property bag.

2. If a hearing is set C/O Mallard and Smith ~~can~~ can testify

SECRET

CONFIDENTIAL

SECRET

that I had excessive amount of property thats why
it all could not fit in one bag.

Wherefore, the claimant prays that this court adjudge
the above-described allegations to Mr. McKinney and order
the Arkansas Department of Correction to pay for claimant
missing property, and for such further relief to which
he may be entitled.

K
Kwasi McKinney #

4-15-20

Arkansas
State Claims Commission

OCT 08 2020

RECEIVED

Kwasi McKinney

Claim No. 200909
~~200909~~

vs

Arkansas Department of Division

□ □

I'm requesting an update on my pending case.

Thank you in advance.

Kwasi McKinney # [REDACTED]

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

October 14, 2020

Mr. Kwasi McKinney (ADC [REDACTED])
[REDACTED]
[REDACTED]

RE: *Kwasi McKinney v. Arkansas Division of Correction*
Claim No. 200909

Dear Mr. McKinney,

This office received your requests for the status of the above-referenced claim. ADC's motion to dismiss is still pending. When the Claims Commission enters an order on the motion, you will receive a copy via US Mail. The Claims Commission will rule on the motion as quickly as it can.

Sincerely,

Kathryn Irby

ES: msscott

From: [ASCC Pleadings](#)
To: [Thomas Burns](#)
Cc: [Roni Gean](#); [ASCC Pleadings](#); [Kathryn Irby](#)
Subject: ORDER: Kwasi McKinney v. ADC, Claim No. 200909
Date: Wednesday, October 28, 2020 4:02:30 PM
Attachments: [Kwasi McKinney v. ADC .pdf](#)
[Kwasi McKinney v. ADC - Order - 200909.pdf](#)

Please see attached. Contact Kathryn Irby with any questions.

Julie S. Jones
Arkansas Claims Commission

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

October 28, 2020

Mr. Kwasi McKinney (ADC [REDACTED])
[REDACTED]

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602-9411

(via email only)

Re: ***Kwasi McKinney v. Arkansas Division of Correction***
Claim No. 200909

Dear Mr. McKinney and Mr. Burns:

Enclosed please find the Order entered on October 20, 2020, by the Arkansas State Claims Commission. If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: jsjones

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY (ADC [REDACTED])

CLAIMANT

V.

CLAIM NO. 200909

**ARKANSAS DIVISION OF
CORRECTION**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the motion filed by Arkansas Division of Correction (the “Respondent”) to dismiss the claim filed by Kwasi McKinney (the “Claimant”). Based upon a review of the motion, the arguments made therein, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. Claimant filed his claim on March 4, 2020, seeking \$5,000.00 in lost property. Claimant stated that when he was placed in isolation, Respondent’s employees failed to inventory his property, such that he only received one property bag upon being released.

2. Respondent filed a motion to dismiss pursuant to Ark. R. Civ. Proc. 12(b)(6), arguing that Claimant signed his inmate property inventory form when he went to isolation and when he was released. In support, Claimant attached a copy of the inmate property inventory form.

3. Claimant responded to the motion, arguing that his property did not all fit in one bag. Claimant stated that he only signed for the property that he received.

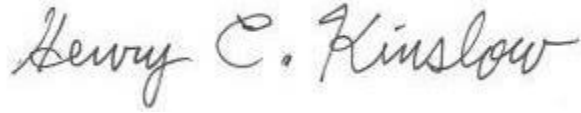
4. In reviewing Respondent’s motion to dismiss, the Claims Commission must treat the facts alleged in the complaint as true and view them in a light most favorable to the Claimant. *See Hodges v. Lamora*, 337 Ark. 470, 989 S.W.2d 530 (1999). All reasonable inferences must be resolved in favor of the Claimant, and the complaint must be liberally construed. *See id.* However, the Claimant must allege facts, not mere conclusions. *Dockery v. Morgan*, 2011 Ark. 94 at *6, 380

S.W.3d 377, 382. The facts alleged in the complaint will be treated as true, but not “a plaintiff’s theories, speculation, or statutory interpretation.” *See id.* (citing *Hodges*, 337 Ark. 470, 989 S.W.2d 530 (1999)).

5. Under the *Hodges* standard, the Claims Commission finds that dismissal is not appropriate at this time. The inmate property form attached to Claimant’s complaint is not signed by Claimant at all, which is odd because if Claimant signed it upon the taking of his property, the only copy he should have would be signed by him. The inmate property form attached to Respondent’s motion has Claimant’s signature twice, but both signatures are dated November 22, 2019, which is when Claimant received property back.

6. Respondent’s motion to dismiss is DENIED, and the parties are instructed to begin discovery.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird
Dexter Booth
Henry Kinslow, Co-Chair
Paul Morris, Co-Chair
Sylvester Smith

DATE: October 20, 2020

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

From: [Thomas Burns](#)
To: [ASCC Pleadings](#)
Cc: [Roni Gear](#)
Subject: Kwasi McKinney v ADC 200909
Date: Tuesday, November 3, 2020 12:24:14 PM
Attachments: [2069_001.pdf](#)

Requests for Admissions

Thomas Burns
General Counsel
Arkansas Department of Corrections
Division of Correction
6814 Princeton Pike
Pine Bluff Arkansas 71602
Phone: (870) 267-6845
Fax: (870) 267-6373
thomas.burns@arkansas.gov

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI McKINNEY (ADC [REDACTED])

CLAIMANT

v

NO. 200909

ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTION

RESPONDENT

FIRST SET OF REQUESTS FOR ADMISSIONS
TO KWASI McKINNEY

Comes now, the Plaintiff, Arkansas Department of Corrections, (ADC), by and through their attorney, Thomas Burns, and for their First Set of Requests for Admissions to Kwasi McKinney, to be answered in accordance with the Arkansas Rule of Civil Procedure, states:

REQUEST FOR ADMISSION NO. 1: Admit that you do not have any damages related to this matter Claim 200909.

REQUEST FOR ADMISSION NO. 2: Admit that your F-841 dated November 22, 2019 is correct.

REQUEST FOR ADMISSION NO. 3: Admit that your claim, 200909, is against Maj. Richardson, Ofc. Smith and Ofc. Mallard personally, mentioned in your complaint, and not the ADC.

REQUEST FOR ADMISSION NO. 4: Admit that you are making a Due Process claim in claim 200909.

REQUEST FOR ADMISSION NO. 5: Admit that you violated ADC policy in relation to claim 200909.

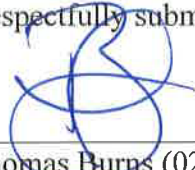
REQUEST FOR ADMISSION NO. 6: Admit that ADC acted pursuant to policy.

REQUEST FOR ADMISSION NO. 7: Admit that you have all your property.

REQUEST FOR ADMISSION NO. 8: Admit that your claim is without merit.

Filed 3 November 2020.

Respectfully submitted,



Thomas Burns (02006)
Department of Correction
6814 Princeton Pike
Pine Bluff, AR 71602
(870) 267-6845 Office
(870) 267-6373 Facsimile
thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 3rd day of November 2020, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Kwasi McKinney ([REDACTED])

[REDACTED]



Thomas Burns

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY (AOC [REDACTED]) CLAIMANT

v

NO. 200909

Arkansas
State Claims Commission

ARKANSAS DEPARTMENT OF CORRECTIONS

DIVISION OF CORRECTIONS

NOV 19 2020
RESPONDENT

RECEIVED

CLAIMANT'S RESPONSE TO RESPONDENT'S
FIRST SET OF REQUEST FOR ADMISSIONS

COMES NOW, Kwasi McKinney, ("Claimant") herein after,
pro-se, and through this his response to respondent's first
set of Request for admissions, states as follow:

1. REQUEST FOR ADMISSION NO. 1: ADMIT THAT YOU DO NOT HAVE
ANY DAMAGES RELATED TO THIS MATTER CLAIM 200909.

1. Answer: Claimant submits that he does have damages related
to this matter claim 200909. The following articles of property
were damaged or not returned to claimant:

- 1- trial transcript was and is missing over 1/2 of its
pages - cost to claimant \$ 2,033.20; and,
- 1- Demand hearing transcript was and is missing 1/3 of
its pages - cost to claimant \$ 315.⁰⁰; and,
- 1- Arkansas Court Rules Volume I - cost to claimant \$ 165⁰⁰
is missing and not returned; and,
- 1- Black's Law Dictionary 9th Edition - cost to claimant
\$ 149.⁰⁰ missing and not returned; and,

(1)

- 1- Arkansas Court Rules Vol II - cost to claimant \$ 126⁰⁰ missing and not returned to claimant; and,
- 1- Prison Legal Guide (Post-conviction) - cost to claimant \$ 159.89 missing and not returned to claimant; and,
- 1- Federal Rules of Criminal Procedure - cost to claimant \$ 49.95 missing and not returned to claimant; and,
- 1- Prison Litigation Manual - cost to claimant \$ 54.95 missing and not returned to claimant; and,
- 1- Habeas Cite Book - cost to claimant \$ 49.95 missing and not returned to claimant; and,
- 1- Loophole - cost to claimant \$ 6.95 missing and not returned to claimant; and,
- 1- Tools of argument - cost to claimant \$ 12.50 missing and not returned to claimant; and,
- 1- Jailhouse Lawyer Manual 10th Edition - cost to claimant \$ 16.95 missing and not returned to claimant; and,
- 1- How to Sue your dead beat Attorney and Law firm - cost to claimant \$ 15.95 missing and not returned to claimant; for a total property loss of \$ 3155.29 not including damages of \$ 10,000.⁰⁰.

REQUEST FOR ADMISSION NO: 2 ADMIT THAT YOUR F-84 DATED NOVEMBER 22, 2019 IS CORRECT.

CLAIMANT'S RESPONSE TO REQUEST NO 2: Claimant submits that the respondents Exhibit "A" submitted to the claims commission was signed on November 22, 2019 by claimant but as listed above numerous items

(2)

of claimant's personal property was missing as is listed in claimant's response to request for Admission No:1 (see above). The F-841 did not contain all of claimant's property therefore No the F-841 was incorrect as pertains to the claimant's missing property.

REQUEST FOR ADMISSION NO 3: ADMIT THAT YOUR CLAIM 200909 IS AGAINST MAJ. RICHARDSON, OFC. SMITH OFC. MALLARD PERSONALLY, MENTIONED IN YOUR COMPLAINT, AND NOT THE ADC.

CLAIMANT'S RESPONSE TO REQUEST FOR ADMISSIONS NO 3:
Claimant maintains the officer Smith and Officer Mellard who failed to perform their duty and responsibilities of doing a complete property inventory and documenting all of claimant's property when securing it were acting under color of law and therefore were consider state actors. All named individuals are state actors, and this claim is against All actors and their employer ADC.

REQUEST FOR ADMISSION NO: 4 ADMIT YOU ARE MAKING A DUE PROCESS CLAIM IN CLAIM 200909.

Claimant's Response to Request for Admission No 4:
Claimant stands on the merits of his complaint.

REQUEST FOR ADMISSION NO 5: ADMIT THAT YOU VIOLATED ADC POLICY IN RELATION TO CLAIM 200909.

CLAIMANT'S RESPONSE TO REQUEST FOR ADMISSION NO 5.

Claimant denies that he has violated any ADC policy in relation to claim 200909.

REQUEST FOR ADMISSION NO 6: ADMIT THAT ADC ACTED PURSUANT TO POLICY.

CLAIMANT'S RESPONSE TO REQUEST FOR ADMISSION NO 6:

Claimant asserts that ADC has violated its very own policy and procedures in that they failed to properly inventory, document and record all of claimant's property, they packed his property outside of his presence enabling them to destroy portions of his property or discard his property, then failed to return all of claimant's property to him. ADC violated all of its own policies and procedures. Claimant denies ADC acted pursuant to its very own policies and procedures.

REQUEST FOR ADMISSION NO: 7: ADMIT THAT YOU HAVE ALL OF YOUR PROPERTY.

Claimant's Response to Request for Admission No 7:

Claimant has provided respondent a list of missing items damaged items and items not returned. This specific list is set out in claimant's Answer to Request for Admission No 1 contained herein. Claimant's property listed in Answer to Request for admission No 1 has not been returned to him.

REQUEST FOR ADMISSION NO 8: ADMIT THAT YOUR CLAIM IS WITHOUT MERIT.

CLAIMANT'S RESPONSE TO REQUEST FOR ADMISSION NO 8:

Claimant asserts that his claim is meritorious and denies respondent's contention that this claim is without merit.

I, Kwasi McKinney declares under penalty of perjury the foregoing is true and correct to the best of my knowledge.

Respectfully submitted



Kwasi McKinney & 



STATE OF ARKANSAS)
COUNTY OF LEE)

SUBSCRIBED AND SWORN TO BEFORE ME, a
Notary Public this NOV day of 9 2020.

4-23-2029

Matthew Lyles

My Commission Expires:

NOTARY

CERTIFICATE OF SERVICE

I, Kwasi McKinney do hereby swear that on this 2nd
day of November 2020 I have served on the respondent
Department of Corrections, through Attorney Thomas Burns,
at 6814 Princeton Pike, Pine Bluff, AR 71602, a
true copy of my Response to Respondents RRD Set
of Request for Admissions by placing same in the
U.S. Mail with sufficient postage affixed to ensure
delivery.

Kwasi McKinney

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY (AOC [REDACTED]) CLAIMANT

v

NO. 200909

Arkansas
State Claims Commission

ARKANSAS DEPARTMENT OF CORRECTIONS

DIVISION OF CORRECTIONS

NOV 19 2020
RESPONDENT

RECEIVED

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FIRST SET OF REQUEST FOR ADMISSIONS

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(2)

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Claimant asserts that his claim is meritorious and denies respondent's contention that this claim is without merit.

I, Kwasi McKinney declares under penalty of perjury the foregoing is true and correct to the best of my knowledge.

Respectfully submitted



Kwasi McKinney & 



STATE OF ARKANSAS)
COUNTY OF LEE)

SUBSCRIBED AND SWORN TO BEFORE ME, a
Notary Public this NOV day of 9 2020.

4-23-2029

Matthew Lyles

My Commission Expires:

NOTARY

CERTIFICATE OF SERVICE

I, Kwasi McKinney do hereby swear that on this 8th
day of November 2020 I have served on the respondent
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at 6814 Princeton Pike, Pine Bluff, AR 71602, a
true copy of my Response to Respondent's RRD Set
of Request for Admissions by placing same in the
U.S. Mail with sufficient postage affixed to ensure
delivery.

Kwasi McKinney

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY (AOC [REDACTED])

CLAIMANT
Arkansas
State Claims Commission

v.

No: 200909

NOV 19 2020

ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTIONS

RECEIVED
RESPONDENT

CLAIMANT'S FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS

COMES NOW, Kwasi McKinney ("Claimant") here in after, pro-se, and through this his first set of requests for production of documents, states as follows:

Pursuant to Arkansas Rules of Civil Procedure ("A.R.C.P.") Rule 34, claimant requests the following:

1. CLAIMANT'S REQUEST FOR PRODUCTION OF DOCUMENTS NO 1:

Claimant request respondent produce a copy of the [REDACTED] [REDACTED] Maximum Security 4 barracks roster as of October 15, 2019.

2. CLAIMANT'S REQUEST FOR PRODUCTION OF DOCUMENTS NO 2:

Claimant request respondent produce a copy of the [REDACTED] [REDACTED] Maximum Security 4 barrack control booth activities log for October 15, 2019.

3. CLAIMANT'S REQUEST FOR PRODUCTION OF DOCUMENTS NO 3:

Claimant request respondent produce a copy of all officer's assigned to [REDACTED] Maximum Security (Max) 4 barracks area on October 15, 2019.

4. CLAIMANT'S REQUEST FOR PRODUCTION NO 4: Claimant

(1)

request Respondent produce a copy of the video camera recording footage of [REDACTED] Max 4 barracks for October 15, 2019.

5. CLAIMANT'S REQUEST FOR PRODUCTION OF DOCUMENTS NO 5:

Claimant Request Respondent produce a copy of ADC's grievance policy Administrative Directives ("AD") 19-20, effective August 1, 2019 and AD 19-34, effective December 2, 2019.

6. CLAIMANT REQUEST FOR PRODUCTION OF DOCUMENTS NO 6:

Claimant Request Respondent produce a copy of ADC's Restrictive Housing policy in effect October 15, 2019.

7. CLAIMANT'S REQUEST FOR PRODUCTION OF DOCUMENTS NO 7:

Claimant request Respondent produce a copy of ADC's Inmate property control policy in effect October 15, 2019.

8. CLAIMANTS REQUEST FOR PRODUCTION OF DOCUMENTS NO 8:

Claimant request Respondent produce a copy of ADC's property control officer's duty and responsibilities.

9. CLAIMANTS REQUEST FOR PRODUCTION OF DOCUMENTS NO 9:

Claimant request Respondent produce a copy of ADC's Behavioral control policy in effect on October 15, 2019.

10. CLAIMANTS REQUEST FOR PRODUCTION OF DOCUMENTS NO 10:

Claimant request Respondent produce a copy of ADC's punitive ISO latron policy and procedures as well as ADC's behavioral Isolation policy and procedures.

11. CLAIMANTS REQUEST FOR PRODUCTION OF DOCUMENTS NO 11:

Claimant request Respondent produce a copy of ADC's protective face shield policy regarding the Maximum Security Area of [REDACTED]

Claimant submits that Pursuant to A.R. Civ. P. Rule 34 Respondent shall, after service of this request for production of documents, have 30 days to serve on claimant a response to claimant's Request unless granted an extension of time by the Court.

EXECUTED THIS 9th
day of November 2020

Respectfully submitted,

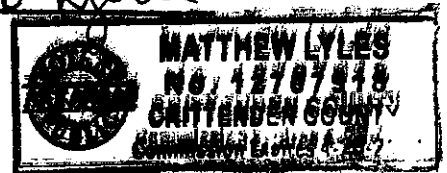
[Signature]
Kwasi McKinney # [Redacted]
[Redacted]

STATE OF ARKANSAS)
COUNTY OF LEE)

SUBSCRIBED AND SWORN TO BEFORE ME a Notary
Public this NOV day of 9 2020.

4-23-2029
My Commission Expires:

[Signature]
NOTARY



CERTIFICATE OF SERVICE

I, Kwasi McKinney, do hereby swear that I have served on this 9th day of November 2020 a true copy of my Request for Production of documents on Arkansas Department of Corrections, Division of Corrections through their Attorney Thomas Burns, at 6418 Princeton Pike, Pine Bluff, AR 71602 by placing same in the U.S. Mail with sufficient postage affixed to ensure delivery.

[Signature]
Kwasi McKinney # [Redacted]

From: [Thomas Burns](#)
To: [ASCC Pleadings](#)
Cc: [Roni Gean](#)
Subject: Kwasi McKinney v ADC 200909
Date: Tuesday, December 1, 2020 4:58:14 PM
Attachments: [2559_001.pdf](#)

ADC response to Request for Admission

Thomas Burns
General Counsel
Arkansas Department of Corrections
Division of Correction
6814 Princeton Pike
Pine Bluff Arkansas 71602
Phone: (870) 267-6845
Fax: (870) 267-6373
thomas.burns@arkansas.gov

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY (ADC [REDACTED])

CLAIMANT

v

NO. 200909

ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTION

RESPONDENT

ADC RESPONSE TO INMATES REQUESTS FOR ADMISSIONS

Comes now, the Plaintiff, Arkansas Department of Correction, (ADC), by and through their attorney, Thomas Burns, and for their Response to Requests for Admissions of Kwasi McKinney, in accordance with the Arkansas Rule of Civil Procedure, states:

REQUEST FOR ADMISSION NO. 1: Claimant Kwasi McKinney ADC NO [REDACTED] (Claimant) requests respondent admit claimant incarcerated in the Arkansas Department of Corrections (ADC)

RESPONSE: Admit

REQUEST FOR ADMISSION NO. 2: Claimant request respondent admit that claimant is currently housed at the East Arkansas Regional Unit.

RESPONSE: Deny, Inmate is a the [REDACTED]

REQUEST FOR ADMISSION NO. 3: Admit claimant is currently housed at the [REDACTED]

RESPONSE: Objection, Counsel for ADC has no idea, but on November 19, 2019 the Inmate was at this location.

REQUEST FOR ADMISSION NO. 4: Admit that on October 15, 2019 claimant was housed in [REDACTED] Maximum Security 4 barracks 41 cell.

RESPONSE: Objection, Counsel for ADC has no idea where the Inmate was housed.

REQUEST FOR ADMISSION NO. 5: Admit that on October 15, 2019 at approximately 2130 hours officers Jones and Mallard removed claimant from Max 4-41 and escorted claimant to the hallway cages nears the Cpts. (sp) office.

RESPONSE: Deny

REQUEST FOR ADMISSION NO. 6: Admit that it was not until approximately 0400 hours on October 16, 2019 that officers Mallard and Smith packed claimants property.

RESPONSE: Deny

REQUEST FOR ADMISSION NO. 7: Admit that on Cotober 16, 2019 at approximately 0400 hours while packing claimant's property neither Officer Smith nor Officer Mallard properly inventoried claimants property.

RESPONSE: Admit

REQUEST FOR ADMISSION NO. 8: Admit that officer Smith and officer Mallard both violated ADC's inventory of inmates property policies and procedures when moving an inmate from Restrictive Housing to Isolation for behavior control.

RESPONSE: Deny

REQUEST FOR ADMISSION NO. 9: Admit that officer Smith and officer Mallard refused to pack all of claimant's property and that a trove of claimant's legal mail, and legal documents and part of his transcripts were left in Max 4 barracks 41 cell.

RESPONSE: Deny

REQUEST FOR ADMISSION NO. 10: Admit that Sgt. Jenkins, the then property Sgt. Did on November 22, 2019 bring claimant one bag of his personal property and ordered claimant to sign the property form or he would not receive any of his property.

RESPONSE: Deny

REQUEST FOR ADMISSION NO. 11: Admit that claimant told Sgt Jenkins on November 22, 2019 that the one bag of property she had was not all of claimants property.

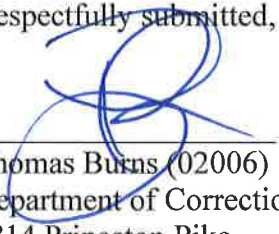
RESPONSE: Deny

REQUEST FOR ADMISSION NO. 12: Admit that claimant filed and exhausted ADC grievance number [REDACTED] 19-02966 regarding this claim 200909.

RESPONSE: Admit

Filed 2 December 2020.

Respectfully submitted,



Thomas Burns (02006)
Department of Correction
6814 Princeton Pike
Pine Bluff, AR 71602
(870)267-6845 Office
(870)267-6373 Facsimile
thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 2nd day of December 2020, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Kwasi McKinney [REDACTED]
[REDACTED]



Thomas Burns

From: [Thomas Burns](#)
To: [ASCC Pleadings](#)
Cc: [Roni Gear](#)
Subject: Kwasi McKinney v ADC 200909
Date: Thursday, December 10, 2020 12:33:37 PM
Attachments: [2696_001.pdf](#)

Motion to Deem Admitted

Thomas Burns
General Counsel
Arkansas Department of Corrections
Division of Correction
6814 Princeton Pike
Pine Bluff Arkansas 71602
Phone: (870) 267-6845
Fax: (870) 267-6373
thomas.burns@arkansas.gov

Confidentiality Notice: This e-mail message and any attachments is the property of the State of Arkansas and may be protected by state and federal laws governing disclosure of private information. It is for the intended recipient only. If an addressing or transmission error has misdirected this e-mail, please notify the author by replying to it. If you are not the intended recipient you may not use, disclose, distribute, copy, print or rely on this email.

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI McKINNEY (ADC [REDACTED])

CLAIMANT

v.

NO. 200909

ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTION

RESPONDENT

MOTION TO DEEM REQUESTS FOR ADMISSIONS ADMITTED

Comes now, the Respondent, Arkansas Department of Correction (ADC), by and through their attorney, Thomas Burns, and for their Motion, states:

1. On November 3, 2020, Respondent caused to be served via US Mail on Claimant a set of Requests for Admissions, *See attached Ex. A*.
2. As such the Claimant responses to the Requests became due on December 7, 2020.
3. The Claimant has failed and refused answers to the Respondent as prescribed by Rule 36(a). *See attached Ex B*
4. The permissible responses, according to **RULE 36(a)**, are, (1) **admit**; (2) **deny**; (3) object, stating the reasons for the objection; (4) state the reasons why the responding party can neither **admit** or **deny**; (5) **admit** or **deny** to the remainder; or (6) **admit** or **deny** in whole or in part with qualification. In one of the few cases construing the **rule**, for example, the Court of Appeals held that “**denied**” was an adequate response. Even if a party has no personal knowledge, he or she must answer a request for admission if the information can be obtained through reasonable inquiry. *Chiodini v Lock; 2010 Ark App 340*.
5. ARCP Rule 36(a) states in part:

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, the party to whom the request is directed served upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney...If objection is made, the reasons therefore shall be stated. **The party answering requests for admissions shall repeat each request immediately before the answer or objection. The answer shall specifically admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter.** A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by his is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it...[emphasis added].

6. Requests for Admissions have their own procedures and requirements, which results in automatic consequences for failure to respond that are similar to though more stringent than failing to respond to pleadings, and much more stringent than those for failing to respond to written discovery such as Interrogatories and Requests for Production. No mention of any specific Requests for Admissions is made anywhere, and no specific issue is taken, even by the respondent's own pleading, with any of the substance of the Requests for Admissions; to the extent any of the requests propounded are considered improper by the respondent, they were not independently objected to with grounds laid out in good faith as mandated by the above-quoted Rule. In any case, by the plain language of Rule 36, as quoted in paragraph 6 hereof, the matters on which admission was sought are deemed admitted. *Compare with Widmer v. Wood, 243 Ark. 547, 420 S.W.2d 828 (1967).*

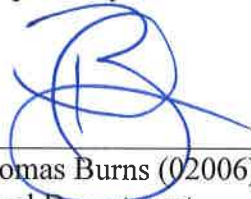
7. Rule 36(a) further states that “The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.” Here, the Imamate has wholly failed to admit, deny, or properly object to any of the propounded requests. Respondent should be granted a reasonable fee for this motion.

8. The Claimant has not followed the Rules as set out for Responses to Requests for Admissions, as such the Requests **SHALL** be deemed admitted.

9. Inmates cannot sent documents through legal mail and it is not authorized by the Rules of Civil Procedure and there my not be a certificate of service as required by Rule 5.

WHEREFORE, the Respondent prays that the Requests for Admission be Deemed Admitted; for attorney’s fees and costs; and for all other just and proper relief to which he may be entitled.

Respectfully submitted,




Thomas Burns (02006)
Legal Department
6814 Princeton Pike
Pine Bluff Arkansas 71602
Telephone (870) 267-6845
Fax (870) 267-6373
thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 10th day of December 2020, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Kwasi McKinney



Thomas Burns

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI McKINNEY (ADC [REDACTED])

CLAIMANT

v

NO. 200909

ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTION

RESPONDENT

FIRST SET OF REQUESTS FOR ADMISSIONS
TO KWASI McKINNEY

Comes now, the Plaintiff, Arkansas Department of Corrections, (ADC), by and through their attorney, Thomas Burns, and for their First Set of Requests for Admissions to Kwasi McKinney, to be answered in accordance with the Arkansas Rule of Civil Procedure, states:

REQUEST FOR ADMISSION NO. 1: Admit that you do not have any damages related to this matter Claim 200909.

REQUEST FOR ADMISSION NO. 2: Admit that your F-841 dated November 22, 2019 is correct.

REQUEST FOR ADMISSION NO. 3: Admit that your claim, 200909, is against Maj. Richardson, Ofc. Smith and Ofc. Mallard personally, mentioned in your complaint, and not the ADC.

REQUEST FOR ADMISSION NO. 4: Admit that you are making a Due Process claim in claim 200909.

REQUEST FOR ADMISSION NO. 5: Admit that you violated ADC policy in relation to claim 200909.

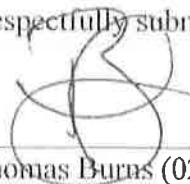
REQUEST FOR ADMISSION NO. 6: Admit that ADC acted pursuant to policy.

REQUEST FOR ADMISSION NO. 7: Admit that you have all your property.

REQUEST FOR ADMISSION NO. 8: Admit that your claim is without merit.

Filed 3 November 2020.

Respectfully submitted,



Thomas Burns (02006)
Department of Correction
6814 Princeton Pike
Pine Bluff, AR 71602
(870) 267-6845 Office
(870) 267-6373 Facsimile
thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 3rd day of November 2020, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Kwasi McKinney [REDACTED]
[REDACTED]



Thomas Burns

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

Kwasi McKinney (Ade [REDACTED])

No. 200909

CLAIMANT'S RECEIVED

01095

NOV 19 2020

ARKANSAS DEPARTMENT OF CORRECTIONS

DIVISION OF CORRECTIONS

RESPONDENT ATTORNEY
ARKANSAS
DIVISION OF CORRECTION

CLAIMANT'S RESPONSE TO RESPONDENT'S

FIRST SET OF REQUEST FOR ADMISSIONS

COMES NOW, Kwasi McKinney, ("Claimant") herein after, pro-se, and through this his response to respondent's first set of Request for admissions, states as follows:

1. REQUEST FOR ADMISSION NO: 1: ADMIT THAT YOU DO NOT HAVE ANY DAMAGES RELATED TO THIS MATTER CLAIM 200909.

1. Answer: Claimant submits that he does have damages related to this matter claim 200909. The following articles of property were damaged or not returned to claimant:

1- trial transcript was and is missing over 1/2 of its pages - cost to claimant \$ 2,033.20; and,

1- Remand hearing transcript was and is missing 1/3 of its pages - cost to claimant \$ 315.⁰⁰; and,

1- Arkansas Court Rules Volume I - cost to claimant \$ 165.⁰⁰ is missing and not returned; and,

1- Black's Law Dictionary 9th Edition - cost to claimant \$ 149.⁰⁰ missing, and not returned; and,

(1)

75 Ex B

- 1- Arkansas Court Rules Vol II - cost to claimant
\$ 126⁰⁰ missing and not returned to claimant; and,
- 1- Prison Legal Guide (Post-conviction) - cost to claimant
\$ 159.89 missing and not returned to claimant; and,
- 1- Federal Rules of Criminal Procedure - cost to claimant
\$ 49.95 missing and not returned to claimant; and,
- 1- Prison Litigation Manual - cost to claimant \$ 54.95
missing and not returned to claimant; and,
- 1- Habeas Cite Book - cost to claimant \$ 49.95
missing and not returned to claimant; and,
- 1- Loophole - cost to claimant \$ 6.95 missing
and not returned to claimant; and,
- 1- Tools of argument - cost to claimant \$ 12.50
missing and not returned to claimant; and,
- 1- Jailhouse Lawyer Manual 10th Edition - cost to claimant
\$ 116.95 missing and not returned to claimant; and,
- 1- How to Sue your dead beat Attorney and Law Firm -
cost to claimant \$ 15.95 missing and not returned
to claimant; for a total property loss of \$ 3155.29
not including damages of \$ 10,000.⁰⁰.

REQUEST FOR ADMISSION NO: 2 ADMIT THAT YOUR E-841
DATED NOVEMBER 22, 2019 IS CORRECT.

CLAIMANT'S RESPONSE TO REQUEST NO 2: Claimant
submits that the respondents exhibit "A" submitted
to the claims commission was signed on November 22,
2019 by claimant but as listed above numerous items

(2)

of claimant's personal property was missing as is listed in claimant's response to request for Admission No:1 (see above). The F-841 did not contain all of claimant's property therefore No the F-841 was incorrect as pertains to the claimant's missing property.

REQUEST FOR ADMISSION NO 3: ADMIT THAT YOUR CLAIM 200909 IS AGAINST MAJ. RICHARDSON, OFC. SMITH OFC. MALLARD PERSONALLY, MENTIONED IN YOUR COMPLAINT, AND NOT THE ADC.

CLAIMANT'S RESPONSE TO REQUEST FOR ADMISSIONS NO 3:
Claimant maintains the officer Smith and Officer Mellard who failed to perform their duty and responsibilities of doing a complete property inventory and documenting all of claimant's property when securing it were acting under color of law and therefore were consider state actors. All named individuals are State actors, and this claim is against All actors and their employer ADC.

REQUEST FOR ADMISSION NO: 4 ADMIT YOU ARE MAKING A DUE PROCESS CLAIM IN CLAIM 200909.

Claimant's Response to Request for Admission No 4:
Claimant stands on the merits of his complaint.

REQUEST FOR ADMISSION NO 5: ADMIT THAT YOU VIOLATED ADC POLICY IN RELATION TO CLAIM 200909.

CLAIMANT'S RESPONSE TO REQUEST FOR ADMISSION NO 5.

Claimant denies that he has violated any ADC policy in relation to claim 200909.

REQUEST FOR ADMISSION NO 6: ADMIT THAT ADC ACTED PURSUANT TO POLICY.

CLAIMANT'S RESPONSE TO REQUEST FOR ADMISSION NO 6:

Claimant asserts that ADC has violated its very own policy and procedures in that they failed to properly inventory, document and record all of claimant's property, they packed his property outside of his presence enabling them to destroy portions of his property or discard his property, then failed to return all of claimant's property to him. ADC violated all of its own policies and procedures. Claimant denies ADC acted pursuant to its very own policies and procedures.

REQUEST FOR ADMISSION NO: 7: ADMIT THAT YOU HAVE ALL OF YOUR PROPERTY.

Claimant's Response to Request for Admission No 7:

Claimant has provided respondent a list of missing items damaged items and items not returned. This specific list is set out in claimant's Answer to Request for Admission No 1 contained herein. Claimant's property listed in Answer to Request for admission No 1 has not been returned to him.

REQUEST FOR ADMISSION NO 8: ADMIT THAT YOUR CLAIM IS WITHOUT MERIT.

CLAIMANT'S RESPONSE TO REQUEST FOR ADMISSION NO 8:
Claimant asserts that his claim is meritorious and denies respondent's contention that this claim is without merit.

I, Kwesi McKinney declare under penalty of perjury the foregoing is true and correct to the best of my knowledge.

Respectfully submitted



Kwesi McKinney 



STATE OF ARKANSAS)
COUNTY OF LEE)

SUBSCRIBED AND SWORN TO BEFORE ME, a
Notary Public this NOV day of 9 2020.

4-23-2029

Matthew Lyles

My Commission Expires:

NOTARY

CERTIFICATE OF SERVICE

I, Kwass McKinney do hereby swear that on this 8th
day of November 2020 I have served on the respondent
Department of Corrections, through Attorney Thomas Burns,
at 6814 Princeton Pike, Pine Bluff, AR 71602, a
true copy of my Response to Respondents Rost Set
of Request for Admissions by placing same in the
U.S. Mail with sufficient postage affixed to ensure
delivery.

Kwass McKinney

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY

CLAIMANT

Arkansas
State Claims Commission

v

NO: 200909

DEC 28 2020

ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTIONS

RECEIVED
RESPONDENT

CLAIMANT'S RESPONSE TO RESPONDENT'S

MOTION TO DEEM REQUESTS FOR ADMISSIONS ADMITTED

COMES NOW, Kwasi McKinney, (Claimant) here in after, pro-se, and through this his response to respondent's motion to deem requests for admissions admitted, states as follows:

1. Claimant admits that the respondent did on November 3, 2020 serve on claimant a set of documents entitled request for admissions. It appears the claimant has submitted those Request for admissions as Exhibit "A" of his Motion to Deem Request for Admissions Admitted.

Claimant Moves pursuant to Fed. Rules of Civil Procedure Rule 10(c) to adopt by Reference Respondent's Exhibit "A", Request of November 3, 2020.

2. Claimant immediately responded to the proposed request for admissions as is demonstrated by Respondent's Exhibit "B" attached to his Motion to deem Requests for admissions admitted.

Claimant moves pursuant to Fed. R. of Civ. Procedure Rule 10(c) to adopt by Reference Claimant's Responded and written responses to Respondent's November 3, 2020 Request for admissions.

3. Claimant asserts his responses do comply with Rule 36 of the federal Rules of civil procedure in that they are timely, for the truth of any matter within the scope of Fed. Rules of Procedure Rule 26(b)(1) they pertain to the "facts, the application of law to fact or opinions about either and the genuineness of any described document.

Rule 36. continues that if an answer is not admitted the answer must specifically deny it or (emphasis added throughout by claimant) state in detail why the answering party cannot truthfully admit or deny it.

4. Claimant asserts that he has been truthful and forth coming in all his pleadings much more so than the respondent who is desperately attempting to avert the issues and merits of this claim.

5. The Respondents again are attempting to deceive and be deceptive in this matter.

6. If this Commission does not believe the answers of Claimant are sufficient and comply with Rule 36 of the Fed. R. Civ. P. then the Court may allow Claimant to amend if it is necessary to promote the presentation of the merits of the action and if the court is not persuaded the requesting party in maintaining or defending the action on the merits.

7. Claimant maintains his responses submitted comply with Rule 36 and make very clear the merits of each matter submitted to respondent. Claimant's responses have meet the substance of the request admission and claimant put forth a good faith effort to qualify his answers.

WHEREFORE, Kwasi McKinney requests this Commission deny Respondents Motion to Deem Requests for Admissions Admitted or on the alternative of

(3)

this Commission deems the Responses by Claimant inadequate that Pursuant to Federal Rules of Civil Procedure Rule 36, allow claimant to amend his responses only if this Commission deems Claimants Responses inadequate, or any other relief Claimant is entitled.

ALICIA
No. 12705685
LEE CO.
Commission Expires

ALICIA WILLIAMS
No. 12705685
LEE COUNTY
Commission Expires 3-01-2028

Respectfully submitted

Kwasi McKinney # [REDACTED]

STATE OF ARKANSAS)
County of LEE)

ALICIA WILLIAMS
No. 12705685
Notary Public

SUBSCRIBED AND SWORN TO BEFORE ME, a
Notary Public this 17th day of December 2020.

3-01-2028

My Commission Expires:

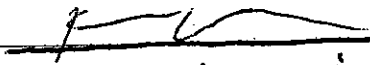

Alicia Williams

Notary

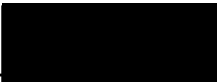
CERTIFICATE OF SERVICE

I, Kwasi McKinney do hereby certify that on this

17 day of December 2020 I have served on Respondent Department of Corrections, through Attorney Thomas Burns at 6814 Princeton Pike Road, Pine Bluff, Ar 71602, a true copy of Claimant's Response to Respondent's Motion to Deem Requests for admissions Admitted by placing same in the US Mail with sufficient postage affixed to ensure delivery.


Kwasi McKinney 

INMATE PERSONAL WITHDRAWAL REQUEST FORM



ADC Unit

Wvasi McKinney
Print Inmate Name



ADC Number

Max 6-29
Barracks Number

PLEASE PRINT REQUESTED INFORMATION

Date of Request 10-26-20 Amount of Request \$ _____

Dollars

Check is to be Payable To: Paralegal Services

Check is to be Mailed To: N. Jones Paralegal Services Name



Street or P.O. Box

City, State, Zip

Purpose of Withdrawal Request Legal Mail Postage

[Signature]
Inmate Signature

ADC Witnessed Signature

Approved: Circle One YES

NO _____

Reason for Denial

Signature Warden / Warden Designee

Business Manager - Print Name

Business Manager Signature

TrustFund Centralized Banking: Inmate Funds Available - Circle One Yes No

Mika Tucker

From: Leslie Browning (DOC)
Sent: Monday, August 1, 2022 9:45 AM
To: ASCC Pleadings
Cc: Thomas Burns (DOC)
Subject: RE: Darrell Williams [REDACTED] Claim 220838
Attachments: ADC Response to RFPD (2).pdf

Please disregard to previous Response to RFPD and accept the attached as a replacement.

Leslie Browning

Arkansas Division of Correction
Central Office/Legal Division
6814 Princeton Pike
Pine Bluff, AR 71602
Legal Support Specialist
Phone: 870-267-6844
Email: leslie.browning@arkansas.gov

From: Leslie Browning (DOC)
Sent: Monday, August 1, 2022 9:41 AM
To: ASCC Pleadings <ASCCPleadings@arkansas.gov>
Cc: Thomas Burns (DOC) <Thomas.Burns@arkansas.gov>
Subject: Darrell Williams ([REDACTED]) Claim 220838

Letter to Claimant, ADC Responses to RFPD, and ADC Responses to RFA

Leslie Browning

Arkansas Division of Correction
Central Office/Legal Division
6814 Princeton Pike
Pine Bluff, AR 71602
Legal Support Specialist
Phone: 870-267-6844
Email: leslie.browning@arkansas.gov

Arkansas
State Claims Commission

FEB 27 2021

RECEIVED

Kwasi McKinney [REDACTED]
[REDACTED]

Arkansas State Claims Commission
101 E. Capitol Ave., Suite 410
Little Rock, AR 72201-3823

RE: McKinney [REDACTED] v Arkansas Department of
Corrections, Division of Corrections, No: 200909;

1. Claimants Motion for Summary Judgment
2. Claimants Brief in Support of Motion for Summary Judgment
3. Claimants Statement of Undisputed Facts

Dear Sir:

Please find enclosed the Claimants Motion for Summary Judgment, Claimants Brief in Support of Motion for Summary Judgment and Claimants Statement of Undisputed Facts for filing in the above reference claim.

Please notify me of any action taken by the Commission.

Cordially
✓✓

cc: file

Enclosures (3)

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY

CLAIMANT

v

NO: 200909

Arkansas
State Claims Commission

FEB 27 2021

ARKANSAS DEPARTMENT OF CORRECTIONS,
DIVISION OF CORRECTIONS

RECEIVED
RESPONDENT

CLAIMANT'S MOTION FOR SUMMARY JUDGMENT

COMES Now, Kwasi McKinney (the "Claimant") here in after, pro-se, and through this his Motion for Summary judgment, states as follows:

1. Claimant did on March 4, 2020 file this instant claim in the Arkansas State Claims Commission (the "Claims Commission") seeking monetary compensation for the lost, damaged or missing property

2. Claimant seeks summary judgment as to the liability of respondent for damages to the plaintiff of loss, damage denial of his personal property.

3. The reasons therefor are set forth in the Claimants declaration and brief in support of this motion.

(1)

4. Pursuant to Federal Rules of Civil Procedure Rule 56, I do hereby seek summary judgment.

WHEREFORE, Kwasi McKinney prays this Commission grant his Motion for Summary Judgment and any other relief this Commission deems appropriate and just.

Respectfully submitted

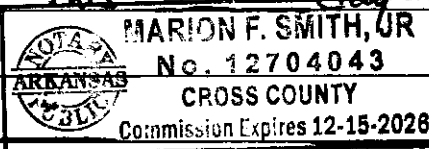

Kwasi McKinney

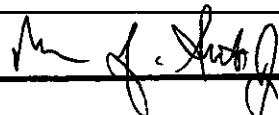
STATE OF ARKANSAS)
COUNTY OF LEE)

SUBSCRIBED AND SWORN TO BEFORE ME, a
Notary Public this 19 day of February 2021.

12-15-2026

My Commission Expires


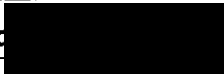



Notary

CERTIFICATE OF SERVICE

I, Kwasi McKinney do hereby swear that on this 22nd
(2)

Day of February 2021 I have served on Respondent through Attorney Thomas Burns, at 6814 Princeton Pike, Pine Bluff, AR 71620 by serving a copy of My Motion for Summary Judgment, and a Copy of My Brief in Support of Motion for Summary Judgment along with a copy of My Undisputed Stated of Material Facts by placing same in the U.S. Mail with sufficient Postage affixed to ensure delivery.


Kwasi McKinney to 

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

Kwasi MCKINNEY

CLAIMANT

Arkansas
State Claims Commission

✓

No: 200909

FEB 27 2021

ARKANSAS DEPARTMENT OF CORRECTIONS,
DIVISION OF CORRECTIONS

RECEIVED

RESPONDENT

CLAIMANT'S BRIEF IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT

I

STATEMENT OF CASE

This is a small claims complaint filed March 4, 2020 in the Arkansas State Claims Commission (the "Claims Commission") seeking damages against respondent for their failure to properly collect, inventory, secure and return claimant's personal property. The loss, damage misplacement of claimant's personal property (see Claimant's Statement of Undisputed Facts ¶ 15), violated claimant's liberty interest in having his property returned after being placed on behavioral control and punitive isolation. (see Claimant's Statement of Undisputed Facts ¶ 4, 8, 11).

(1)

II

STATEMENT OF FACTS

As set forth in Claimant's Statement of Undisputed Facts the respondents moved claimant from his cell in Maxx 4 barracks-41 cell to behavioral control in Isolation. Respondent was responsible for packing, control, and storage of all of claimant's personal property until claimant was ordered complete his assigned 30 days of punitive isolation. (see Claimant's Statement of undisputed facts ¶ 8).

Cpl Mallard and CD Smith did allegedly pack claimant's personal property. (see Claimant's Statement of Undisputed Facts ¶ 5).

Cpl Mallard and Co Smith did not afford claimant the opportunity to sign ADC form F-841-1 on October 17-18, 2019 when these two individuals allegedly secured claimant's property and stored in the unit property room. (see Claimant's Statement of Undisputed Facts ¶ 7).

Sgt Palmer, the Sanitation Sgt., notified claimant on October 18, 2019 that when cleaning Maxx 4-41 cell there was a trove of legal papers, legal mail, legal

books and numerous other items of claimant still in the cell. (see Claimant's Statement of Undisputed Facts ¶ 9, 9(a)).

On November 22, 2019 after release from punitive isolation Claimant was forced by Sgt. Jenkins, the EARU property Sgt. to sign for the property and make no complaint about the missing property (see Claimant's Statement of Undisputed Facts ¶'s 10, 11, 12, 13).

ARGUMENT I

DUE PROCESS

The Due Process Clause prohibits governments, including prison officials, from depriving prisoners of "life, liberty, or property without due process of law." See U.S. Const. Amendment Fourteen.

There are two kinds of due process issues: procedural and substantive. Procedural due process means the procedures that the Constitution requires before the government can deprive one of life, liberty or property. ~~Procedural due process~~ Substantive due process "bars certain arbitrary, wrongful government actions, regardless of the fairness of the procedures used to implement them." Zigerman v. Burch, 494 U.S. 113, 125, 110 S.Ct. 975 (1990) (citation omitted);

(3)

accord, County of Sacramento v Lewis, 523 US 833, 840, 118 S.Ct. 1708 (1998).

Claimant asserts the state officials have improperly interfered with his liberty interest in having, controlling and possessing of his legal papers, legal and legal books after release from punitive restriction. State officials have arbitrarily and intentionally deprived claimant of his property.

The state has created the liberty interest in claimant's rights to have legal mail, legal papers and legal books in the ordinary incidents of prison life. Wilkinson v Austin, 545 US 209, 223, 125 S.Ct. 2384 (2005) (quoting Sandlin).

In this instant case Prison officials knowingly and intentionally failed to secure claimant's personal property after removing him from his cell and placing him on behavioral control then punitive isolation.

Claimant asserts he was entitled to the proper securing of his property by CPL Mallard and CO Smith, and Sgt. Jenkins as well as the return of all of his personal property on November 22, 2019 which prison officials failed to do because they could not do.

Claimant maintains that prison officials have knowing and intentionally denied him his property valued at \$ 3155.29. Claimant seeks damages for loss, damage and destruction of his property of \$ 3155.29 ~~and~~ and an additional award of \$ 10,000⁰⁰ for a total property damage award of \$ 13155.29.

Claimant maintains that a jury could reasonably find in favor of Claimant based on all the facts presented in claimants Brief in Support, Statement of Undisputed Facts and Summary judgment and therefore this Arkansas State Claims Commission should grant Claimants Motion for Summary Judgment. Anderson v Liberty Lobby, Inc., 477 US 242, 248, 106 S.Ct. 2505 (1986).

WHEREFORE, Kwasi McKinney asserts for the foregoing reasons, his Motion for Summary Judgment should be granted and Claimant awarded ~~and~~ \$ 13,155.29 and any other relief this Commission deems appropriate and just.

Respectfully submitted

Kwasi McKinney

(5)

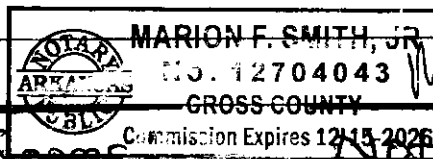
STATE OF ARKANSAS)

COUNTY OF LEE)

SUBSCRIBED AND SWORN TO BEFORE ME, a
Notary Public this 19 day of February 2021.

12-15-2026

My Commission Expires



[Signature]
Notary

CERTIFICATE OF SERVICE

I, Kwasi McKinney do hereby swear that on this 22nd day of February 2021 I have served on Respondent through Attorney Thomas Burns, at 6418 Princeton Pike, Pine Bluff, Ar, 71602 a true copy of my Motion for Summary Judgment, Brief in support of Motion for Summary Judgment and Undisputed Facts by placing same in the U.S. Mail with sufficient postage affixed to ensure delivery.

[Signature]
Kwasi McKinney [REDACTED]

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY

CLAIMANT

v

NO: 200909

Arkansas
State Claims Commission

FEB 27 2021

ARKANSAS DEPARTMENT OF CORRECTIONS,
DIVISION OF CORRECTIONS

RECEIVED
RESPONDENT

CLAIMANT'S STATEMENT OF
UNDISPUTED FACTS

COMES NOW, Kwasi McKinney (the "Claimant") here
in after, and presents his statement of undisputed
facts pursuant to Local Rule 56.1, as follows:

1. Claimant, Kwasi McKinney, ADC# [REDACTED] is an
inmate in the custody of the Arkansas Department
of Corrections, Division of Corrections. (Complaint
filed March 4, 2020 (the "Complaint").

2. Claimant alleged that on October 17, 2019, the date
of the offense, he was housed at the East Arkansas
Regional Unit of the Arkansas Department of Corrections
("ADC") in the Maximum Security Unit, Zone 2, Max
4 Barracks, cell 41. (see Complaint).

(1)

3. At approximately 9:22 pm ADC Cpl Mallard and Cpl. Jones were escorting inmate G. Hall, ADC [REDACTED] past Claimant's cell when claimant spit on inmate Hall.

4. Cpl Jones alleged some of the spittle landed on his face so, Claimant, at approximately 9:30 pm was removed from his cell, Max 4-cell 41 and placed in isolation on behavioral control on this same date October 17, 2019.

5. On October 17-18, 2019, Cpl Mallard and Correctional officer ("CO") Smith, some time after Claimant was removed from his cell to isolation, entered Claimant's cell, Max 4-cell 41 and proceeded to pack claimant's personal property.

6. On October 17, 2019 Cpl Mallard and CO Smith failed to pack all of claimant's property. (see List of missing items listed in Claimant's Response to Respondent's First set of REQUEST FOR ADMISSIONS # 1 answer 1).

7. On October 17-18, 2019 Cpl Mallard and CO Smith failed to ~~to~~ adhere to ADC's property policy and present to claimant a list of all properties taken into possession and put in the unit property office. (see Respondent's Motion to Dismiss; Exhibit "A").

(2)

8. Claimant was served a disciplinary report of rules violations for the incidents which occurred on October 17, 2019 written by Cpl. C. Jones. Claimant was found guilty by the disciplinary hearing officer and assessed 30 days of punitive isolation among other punitive restrictions. (see incident report # 2019-10-215).

9. On October 18, 2019, the sanitation officer, Sgt. Palmer informed me that when they were cleaning up my previous cell, Max 4-41, the cleaning crew found a trove of legal papers, legal mail, legal books and numerous other items of mine still in the cell which the officers Mallard and Smith did not pack or put in the unit property room.

9(a) Sgt. Palmer could not recall each and every item but says she gave the property left behind by Mallard and Smith to property Sgt. Jenkins.

10. On November 22, 2019, Claimant completed his punitive restriction in Isolation and was moved to East Arkansas Regional Unit, Zone 4 Max 6 barracks cell 29.

11. On November 22, 2019 Property Sgt Jenkins came
(3)

to my cell, Max 6-29, with one bag of property. I asked Sgt. Jenkins where the rest of my property was and Sgt Jenkins said this was all she had. I told Sgt Jenkins this was not all of my property.

12. Sgt. Jenkins ordered me to sign the property form or she would not give me any of my property. I was forced to sign the F-841-1 on November 22, 2019, even though I had property missing. (see Respondent's Motion to Dismiss; Exhibit "A").

13. After getting the one bag of property inside my cell, Max 6-29, I began an inventory and after noting a trove of missing items, Claimant filed a grievance on November 25, 2019 making a claim regarding Claimant's missing property (Grievance [REDACTED] 19-02966; filed November 25, 2019; Exhausted February 12, 2020; attached to Complaint).

14. Claimant, having exhausted the ADC Inmate grievance policy in accordance with the Prison Litigation Reform Act ("PLRA") of 1996, filed his complaint in the Arkansas State Claims Commission seeking damages for his lost or stolen property.

15. Claimant asserts the below listed articles of property were lost, stolen or damaged:

- 1) 1- Arkansas Court Rules Volume I - cost to claimant \$ 165.⁰⁰; and
- 2) 1- Blacks Law Dictionary 9th Edition - cost to claimant \$ 149.⁰⁰; and
- 3) 1- trial transcript (1/2 is missing) cost to claimant \$ 2,033.20;
- 4) 1- remand hearing transcript (missing 1/3) cost to claimant \$ 315.⁰⁰; and
- 5) 1- Arkansas Court Rules Volume II - cost to claimant \$ 126.⁰⁰; and,
- 6) 1- Prison Legal Guide (Post-conviction) - cost to claimant \$ 159.⁸⁹; and,
- 7) 1- Federal Rules of Civil Procedure - cost to claimant \$ 49.⁹⁵; and,
- 8) 1- Prison Litigation Manual - cost to claimant \$ 54.95; and,
- 9) 1- Habeas Cite Book - cost to claimant \$ 49.95; and,
- 10) 1- Loophole - cost to claimant \$ 6.95; and,
- 11) 1- Tools of Argument - cost to claimant \$ 12.50; and,
- 12) 1- Jailhouse Lawyer Manual 10th Edition - cost to claimant \$ 16.95; and
- 13) 1- How to sue your dead beat Attorney and Law Firm - cost to claimant \$ 15.⁹⁵; and,
- 14) Total lost property of \$ 3155.29, not including damages of \$ 10,000.⁰⁰. - total damages of \$ 13155.29.

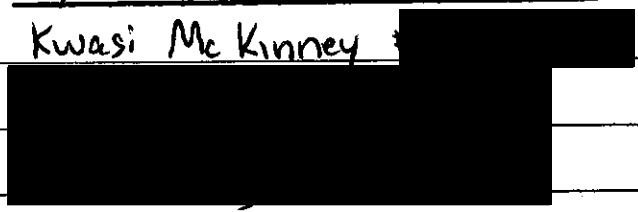
16. Claimant asserts that he has had to develop and file his Ark. Rules of Criminal Procedure Rule 37 Petition without the use of his legal books, papers, transcripts.

17. Claimant asserts that he has had to file an appeal to the Arkansas Court of Appeals without the use of his legal books, papers and transcripts.

(5)

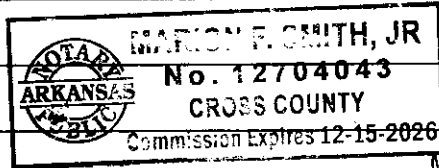
Respectfully submitted

Kwasi McKinney



STATE OF ARKANSAS)
COUNTY OF LEE)

SUBSCRIBED AND SWORN TO BEFORE ME, a
Notary Public this 19 day of February
2021,



12-15-2026

My Commission Expires:

Marion F. Smith, Jr.
Notary

CERTIFICATE OF SERVICE

I, Kwasi McKinney do hereby swear that on this 22nd day
of February 2021, I have served a true copy of my
Statement of Undisputed Facts on Respondent through
Attorney Thomas Burns, at 6814 Princeton Pike, Pine Bluff
AR, 71602, by placing same in the U.S. Mail with sufficient
Postage affixed to ensure delivery.

Kwasi McKinney



(6)

From: [Thomas Burns](#)
To: [ASCC Pleadings](#)
Cc: [Roni Gean](#)
Subject: Kwasi McKinney v ADC 200909
Date: Monday, March 15, 2021 10:22:54 AM
Attachments: [4650_001.pdf](#)
[4651_001.pdf](#)

ADC Response to Motion for Summary Judgment
ADC Renewed Motion to Dismiss

Thomas Burns
General Counsel
Arkansas Department of Corrections
Division of Correction
6814 Princeton Pike
Pine Bluff Arkansas 71602
Phone: (870) 267-6845
Fax: (870) 267-6373
thomas.burns@arkansas.gov

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI McKINNEY (ADC [REDACTED])

CLAIMANT

V.

NO. 200909

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

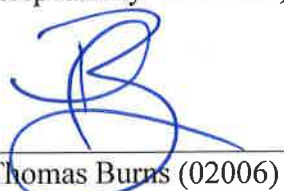
ADC RESPONSE TO MOTION FOR SUMMARY JUDGMENT

Respondent, Arkansas Department of Correction (ADC), for its reply, states:

1. The ADC denies each and every allegation contained in the Inmate's motion unless specifically admitted herein. In fact every thing in the Inmates complaint is disputed.
2. The ADC denies paragraph 1.
3. The ADC denies paragraph 2.
4. The AC denies paragraph 3. .
5. The ADC denies paragraph 4.
6. All the averments in the Inmate's motion are in dispute making Summary Judgement inappropriate.

WHEREFORE, Respondent prays that this Motion to Dismiss be denied; for their attorney's fees and costs; and all other just and proper relief to which they may be entitled.

Respectfully submitted,

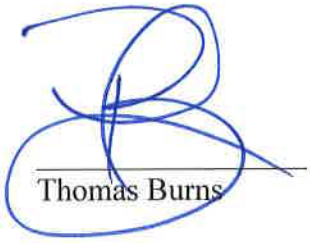


Thomas Burns (02006)
Division of Correction
Legal Department
6814 Princeton Pike
Pine Bluff, AR 71602
(870) 267-6845 Office
(870) 267-6373 Facsimile
thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 15th day of March 2021, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Kwasi McKinney ([REDACTED])
[REDACTED]



Thomas Burns

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI McKINNEY (ADC [REDACTED])

CLAIMANT

v

NO. 200909

ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTION

RESPONDENT

RESPONDENT'S RENEWED MOTION TO DISMISS

Comes Now the Respondent, Arkansas Department of Corrections (ADC), for its Motion to Dismiss, states:

1. The inmate's claim should be dismissed pursuant to the Arkansas Rules of Civil Procedure (ARCP) 12(b)(6) as it fails to state facts upon which relief can be granted.
2. On a motion to dismiss pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure the courts treat the facts alleged in complaints as true and view them in the light most favorable to the plaintiff. *Dockery v Morgan, 2011 Ark. 94*. "However, [Arkansas's] rules require fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle the pleader to relief." *Id.* The Court should "treat only the facts alleged in the complaint as true but not the plaintiff's theories, speculation, or statutory interpretation." *Id.*
3. Legal conclusions, unsupported conclusions, and unwarranted inferences must be ignored and fail to withstand a Rule 12(b)(6) motion. *See Farm Credit Svcs. v American State bank, 339 F.3d 764 (8th Cir. 2003)*. A pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief. *Ashcraft v Iqbal 556 U.S. 662 (2009)*. Although detailed factual allegations are not required, more than "unadorned, the-defendant-unlawfully-harmed-me-accusations" are required. *Id.* To survive a motion to dismiss, a complaint must contain sufficient factual matter that, when accepted as true, state a claim to

relief that is plausible on its face. *Id.* A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

4. The inmate seeks the sum of \$5000.00 for alleged Missing Property. Although inmate seeks an award of damages (\$5000.00), he fails to plead any basis for an award of damages, and he fails to give the Arkansas Claims Commission any rational basis beyond mere speculation of the damages. Damages are an essential element of a tort claim and there must an allegation of sufficient facts to satisfy the damages element or the case is subject to a motion to dismiss. *Wallis v. Ford Motor Company*, 362 Ark. 317, 208 S.W. 3d 153 (2008). The inmate’s claim, even if true, does not support a claim for monetary relief.

5. Even if the inmate were to plead with more specificity, he would still not be able to prevail. The party claiming damages has the burden of proving those damages beyond speculation. *Minerva Enterprises v. Howlett*, 308 Ark. 291, 824 S.W. 2d 377 (1992). Even taking the inmate’s allegations true as pleading, and giving him the benefit of every possible inference, his mere inconvenience of alleged wrongdoing can never render a claim that is anything but speculation.

6. Pro Se parties are not given special treatment and are held to the same standard as a licensed attorney. *Pressler v. Ark. Publ. Serv. Comm’n*, 2011 Ark. App. 512, at 9, 385 S.W.3d 349, 355 (citing *Elder v. Mark Ford & Assocs.*, 103 Ark. App. 302, 288 S.W.3d 702 (2008)). The Claims Commission notes that under Arkansas law, a claimant choosing to represent himself is held to the same standard as an attorney. *Michael Pickens v ADC claim 190793 (ASCC 2019)*.

7. Whether a plaintiff is represented by counsel or is appearing pro se, his complaint must allege specific facts sufficient to state a claim. See *Martin v Sargent*, 780 F.2d 1334, 1337 (8th Cir. 1985).

8. A complaint must state facts, not mere conclusions, in order to satisfy the requirements of Rule 8 of the Arkansas Rules of Civil Procedure. *Doe v Weiss*, 2010 Ark. 150.

9. In reviewing whether a complaint is subject to dismissal, the Court must accept as true all factual allegations in the complaint, but is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* “Nor does a complaint suffice if it ‘tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Id.* (quoting *Twombly*, 550 U.S. at 557). Rather, a complaint must plead “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 556). A well pleaded complaint may proceed even if it appears that actual proof of those facts is improbable and that recovery is very remote and unlikely. *Twombly*, 550 U.S. at 556. A complaint cannot, however, simply leave open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery. *Id.* at 561. Rather, the facts set forth in the complaint must be sufficient to nudge the claims across the line from conceivable to plausible. *Id.* at 570. “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged –but it has not ‘show[n]’ – ‘that the pleader is entitled to relief.’” *Iqbal*, 556 U.S. at 679 (quoting *Fed.R.Civ.P. 8(a)(2)*).

10. The Plausibility standard is not akin to a “probability requirement” but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads

facts that are “merely consistent with” a defendant’s liability, it” stops short of the line between possibility a plausibility of entitlement to relief” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)

11. The inmate is currently housed at th [REDACTED] of the ADC. He is serving a 154-year sentence on a conviction of Simultaneous Possession of Drug/Firearms and other crimes.

12. The inmate claims that he not given his property back when released from isolation.

13. The inmate file a Motion for Summary Judgment.

14. In the Motion to Inmate is making Due Process (4th Amendment) claims. *See attached Ex A.*

15. Clearly this matter is outside the jurisdiction of the Claims Commission and should be filed in the Courts.

16. The inmate has filed a complaint that he knows is in bad faith and not supported by the facts. The Commission should award the ADC fees and costs for having to respond to this baseless complaint.

17. This same claim, if presented to a court of general jurisdiction would, as a matter of law, be dismissed.

18. “The commission shall make no award for any claim which, as a matter of law, should be dismissed from a court of law or equity for reasons other than sovereign immunity.” Ark. Code Ann. § 19-10-204(3)(A) (West Supp. 2015). “Specifically, if the facts of a given claim would cause the claim to be dismissed as a matter of law from a court of general jurisdiction, then the commission shall make no award on the claim.” Ark. Code Ann. § 19-10-204(3)(B) (West Supp. 2015). The claimant has not been damaged and only makes mere

assertions that he has been damages. Without damages a Court would dismiss the claim in its entirety.

WHEREFORE, the Respondent prays that the motion be granted and the complaint dismissed; for their attorney's fees and costs; and all other just and proper relief to which they may be entitled.

Respectfully submitted,

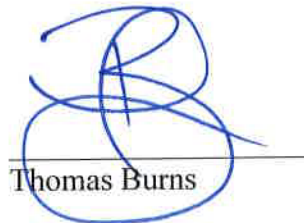


Thomas Burns (02006)
Legal Department
Division of Correction
6814 Princeton Pike
Pine Bluff, AR 71602
(870) 267-6845 Office
(870) 267-6373 Facsimile
thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of the above pleading has been served this 26th day of May, 2017, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Kwasi McKinney ([REDACTED])
[REDACTED]



Thomas Burns

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY

CLAIMANT

✓

NO: 200909

ARKANSAS DEPARTMENT OF CORRECTIONS,

DIVISION OF CORRECTIONS

RESPONDENT

CLAIMANT'S BRIEF IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT

I

STATEMENT OF CASE

This is a small claims complaint filed March 4, 2020 in the Arkansas State Claims Commission (the "Claims Commission") seeking damages against Respondent for their failure to properly collect, inventory, secure and return claimant's personal property. The loss, damage misplacement of claimant's personal property (see Claimant's Statement of Undisputed Facts ¶ 15), violated claimant's liberty interest in having his property returned after being placed on behavioral control and punitive isolation. (see Claimant's Statement of Undisputed Facts ¶ 4, 8, 11).

(1)

II STATEMENT OF FACTS

As set forth in Claimant's statement of Undisputed facts the respondents moved claimant from his cell in Max 4 barracks-41 cell to behavioral control in Isolation. Respondent was responsible for packing, control, and storage of all of claimant's personal property until claimant was or did complete his assigned 30 days of punitive isolation. (see Claimant's Statement of undisputed facts ¶ 8),

Cpl Mallard and CD Smith did allegedly pack claimant's personal property. (see Claimant's Statement of Undisputed facts ¶ 5).

Cpl Mallard and Co Smith did not afford claimant the opportunity to sign ADC form F-841-1 on October 17-18, 2019 when these two individuals allegedly secured claimant's property and stored in the unit property room. (see Claimant's Statement of Undisputed Facts ¶ 7).

Sgt Palmer, the Sanitation Sgt., notified claimant on October 18, 2019 that when cleaning Max 4-41 cell there was a trove of legal papers, legal mail, legal

books and numerous other items of claimant still in the cell. (see Claimant's Statement of Undisputed Facts ¶19, 9(4)).

On November 22, 2019 after release from punitive isolation Claimant was forced by Sgt. Jenkins, the EARU property Sgt. to sign for the property and make no complaint about the missing property (see Claimant's Statement of Undisputed Facts ¶¶ 10, 11, 12, 13).

ARGUMENT I

DUE PROCESS

The Due Process Clause prohibits governments, including prison officials, from depriving prisoners of "life, liberty, or property without due process of law." See U.S. Const. Amendment Fourteen.

There are two kinds of due process issues: procedural and substantive. Procedural due process means the procedures that the Constitution requires before the government can deprive one of life, liberty or property. ~~Procedural due process~~ Substantive due process "bars certain arbitrary, wrongful government actions, regardless of the fairness of the procedures used to implement them." Zigerman v Burch, 494 U.S. 113, 125, 110 S.Ct. 975 (1990) (citation omitted);

(3)

accord, County of Sacramento v Lewis, 523 US 833, 840, 118 S.Ct. 1705 (1998).

Claimant asserts the state officials have improperly interfered with his liberty interest in having, controlling and receiving of his legal papers, legal and legal books after release from punitive restriction. State officials have arbitrarily and intentionally deprived claimant of his property.

The state has created the liberty interest in claimant's rights to have legal mail, legal papers and legal books in the ordinary incidents of prison life. Wilkinson v Austin, 545 US 209, 223, 125 S.Ct. 2384 (2005) (quoting Sandlin).

In this instant case Prison officials knowingly and intentionally failed to secure claimant's personal property after removing him from his cell and placing him on behavioral control then punitive isolation.

Claimant asserts he was entitled to the proper securing of his property by CPL Mallard and CO Smith, and Sgt. Jenkins as well as the return of all of his personal property on November 22, 2019 which prison officials failed to do because they could not do.


Claimant maintains that prison officials have knowing and intentionally denied him his property valued at \$ 3155.29. Claimant seeks damages for loss, damage and destruction of his property of \$ 3155.29 ~~for~~ and an additional award of \$ 10,000⁰⁰ for a total property damage award of \$ 13155.29.

Claimant maintains that a jury could reasonably find in favor of Claimant based on all the facts presented in claimants Brief in Support, Statement of Undisputed Facts and Summary judgment and therefore this Arkansas State Claims Commission should grant Claimants Motion for Summary Judgment. Anderson v Liberty Lobby, Inc., 477 US 242, 248, 106 S.Ct. 2505 (1986).

WHEREFORE, Kwesi McKinney asserts for the foregoing reasons, his Motion for Summary Judgment should be granted and Claimant awarded ~~\$ 210,000~~ \$ 13,155.29 and any other relief this Commission deems appropriate and just.

Respectfully submitted



Kwesi McKinney 

STATE OF ARKANSAS)
COUNTY OF LEE)

SUBSCRIBED AND SWORN TO BEFORE ME, a
Notary Public this 19 day of February 2021.

12-15-2026



[Signature]

My Commission Expires: _____ Notary

CERTIFICATE OF SERVICE

I, Kwasi McKinney do hereby swear that on this 22nd day of February 2021 I have served on Respondent through Attorney Thomas Burns, at 6418 Princeton Pike, Pine Bluff, AR, 71602 a true copy of my Motion for Summary Judgment, Brief in support of motion for Summary Judgment and Undisputed Facts by placing same in the U.S. Mail with sufficient postage affixed to ensure delivery.

[Signature]
Kwasi McKinney [Redacted]

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

Kwasi McKinney

CLAIMANT

Arkansas
State Claims Comm

✓

No: 200909

APR 08 2021

RECEIVED

ARKANSAS DEPARTMENT OF CORRECTIONS

RESPONDENT

CLAIMANT'S RESPONSE TO
RESPONDENT'S MOTION TO DISMISS

COMES NOW, Kwasi McKinney ("the Claimant") here in
after, pro-se, and through this his Response to
Respondent's Motion to Dismiss, states as follows:

1. Claimant has moved this Commission for Summary Judgment pursuant to Fed. R. Civil. Rule 56.
2. Claimant filed his Motion for Summary Judgment, Brief in Support of Motion for Summary Judgment and Statement of Undisputed Facts.
3. The Respondent has failed to dispute the facts of this case as is set out in his Undisputed Facts, whereby the Respondent has waived its right to dispute the facts.

4. In light of the respondents failure to dispute the facts, this servers as an admission of the facts as set out by Claimant.

5. Based upon the facts set forth in the undisputed facts, this Commission cannot grant the Respondents Motion to Dismiss.

6. Based upon the Law, the Commission must grant Claimant's Motion for summary Judgment.

7. Based upon the complaint and facts, Claimant is entitled to Summary Judgment and the full award of all damages sought.

WHEREFORE, Kwasi McKinney prays this Commission deny the Respondents Motion to dismiss, grant Claimant summary judgment and award all damages sought by Claimant and any other relief this Commission deems appropriate and just.

Respectfully submitted,

Kwasi McKinney # [REDACTED]

Arkansas
State Claims Commission

APR 08 2021

RECEIVED

Marionne, AR 72360


STATE OF ARKANSAS)
County of LEE)

SUBSCRIBED AND SWORN TO BEFORE ME, a
Notary Public this _____ day of _____
2021.

My Commission Expires: _____ NOTARY

CERTIFICATE OF SERVICE

I, Kwasi McKinney do hereby certify that on this 1st
day of April 2021 I have served on Respondent
through its attorney Thomas Burns, at 6814 Princeton
Pike, Pine Bluff AR 71602 by placing this Claimant's
Response to Respondent's Motion to Dismiss in the U.S.
Mail with sufficient postage affixed to ensure delivery.


Kwasi McKinney

From: [Misty Scott](#) on behalf of [ASCC Pleadings](#)
To: [Thomas Burns](#)
Cc: [Roni Gean](#); [ASCC Pleadings](#); [Kathryn Irby](#)
Subject: ORDER: Kwasi McKinney v. ADC, Claim No. 200909
Date: Wednesday, June 16, 2021 10:50:49 AM
Attachments: [Kwasi McKinney v. ADC.pdf](#)
[Kwasi McKinney-Order.pdf](#)

Thomas:

Please see attached. Contact Kathryn Irby with any questions.

Misty Scott
Arkansas State Claims Commission

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

June 16, 2021

Mr. Kwasi McKinney (ADC [REDACTED])
[REDACTED]
[REDACTED]

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602-9411

(via email only)

Re: ***Kwasi McKinney v. Arkansas Division of Correction***
Claim No. 200909

Dear Mr. McKinney and Mr. Burns:

Enclosed please find an Order entered on June 15, 2021, by the Arkansas State Claims Commission. If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: msscott

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY (ADC 137065)

CLAIMANT

V.

CLAIM NO. 200909

**ARKANSAS DIVISION OF
CORRECTION**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the motion filed by the Arkansas Division of Correction (the “Respondent”) seeking to deem admitted its requests for admission propounded to Kwasi McKinney (the “Claimant”). Also pending is Claimant’s motion for summary judgment. Based upon a review of the motion, the arguments made therein, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. The Claims Commission has jurisdiction to hear this claim pursuant to Ark. Code Ann. § 19-10-204(a).

2. Claimant filed his claim on March 4, 2020, seeking \$5,000.00 in lost property.

3. Respondent filed a motion to dismiss, which was denied by the Claims Commission on October 20, 2020. As part of that order denying the motion to dismiss, the parties were instructed to begin discovery.

4. Respondent sent requests for admission to Claimant on November 3, 2020.

5. Respondent subsequently filed a motion to deem admitted, arguing that Claimant failed to respond pursuant to Ark. R. Civ. Proc. 36(a).

6. Ark. R. Civ. Proc. 36(a) provides, in pertinent part, that:

. . . Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his

attorney. . . . If objection is made, the reasons therefore shall be stated. The party answering requests for admissions shall repeat each request immediately before the answer or objection. The answer shall specifically admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served.

(emphasis added).

7. The Claims Commission finds that Claimant did not respond in such a way that it was immediately clear whether Claimant was admitting, denying, or objecting to the request. As such, the Claims Commission will give Claimant 30 days to file amended responses and to serve a copy of the amended responses on Respondent via US Mail pursuant to the Arkansas Rules of Civil Procedure. Respondent's motion to deem admitted is denied.

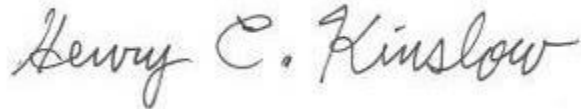
8. Claimant's motion for summary judgment will be denied, as there are material questions of fact remaining.

9. Respondent's renewed motion to dismiss will also be denied, as this claim is based upon the loss of property. Claimant's inclusion of an argument in his motion for summary judgment regarding due process does not automatically transform this missing property claim into a constitutional claim.

10. The parties are instructed to continue discovery and to notify the Claims Commission when discovery is nearing completion, so that this claim can be added to the hearing docket.

11. Any other pending motions are denied.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird
Dexter Booth
Henry Kinslow, Co-Chair
Paul Morris, Co-Chair
Sylvester Smith

DATE: June 15, 2021

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY

CLAIMANT

Arkansas
State Claims Commission

v

NO: 200909

JUL 06 2021

ARKANSAS DEPARTMENT OF CORRECTIONS

RECEIVED

DIVISION OF CORRECTIONS

RESPONDENT

CLAIMANT'S AMENDED RESPONSE
TO RESPONDENT'S FIRST SET OF REQUEST FOR
ADMISSIONS

COMES NOW, Kwasi McKinney, ("the "Claimant") here in
after, pro-se, and through this his Amended response
to Respondent's First set of request for Admissions,
States as follows:

1. Claimant filed his claim March 4, 2020 seeking \$
5,000.⁰⁰ in lost property.

2. The Arkansas State Claims Commission (the "Claims
Commission") determined it had jurisdiction to hear
this claim pursuant to Ark. Code. Ann. § 19-10-204(g).

3. Arkansas Department of Corrections, Division of
Corrections (the "Respondent") filed a Motion to dismiss

which was denied by the Commission on October 20, 2020. The parties were instructed to begin discovery.

4. The Respondent did, on November 3, 2020, send a first set of Requests for admissions to Claimant.

5. The respondent and Claims Commission were unclear on claimant's responses, therefore the Claims Commission instructed claimant to file amended responses within thirty (30) days of its June 16, 2021 order and serve on the Respondent a copy of those amended responses via U.S. Mail pursuant to the Arkansas Rules of Civil Procedure.

6. Claimant makes these his amended Responses:

REQUEST FOR ADMISSION NO 1: ADMIT THAT YOU DO NOT HAVE ANY DAMAGES RELATED TO THIS MATTER CLAIM 200909.

CLAIMANT'S RESPONSE TO REQUEST FOR ADMISSION NO 1 DENY: Claimant has suffered damages related to this matter claim 200909. The following articles of property were damaged or not returned to claimant:

1- trial transcript - missing over 1/2 of its content - cost to claimant \$ 2,033.20; and,
(2)

1- Remand hearing transcript - missing 1/3 of its contents, cost to claimant \$ 315.00; and,

1- Arkansas Court Rules Volume I - missing and not returned to claimant - cost to claimant \$ 165.⁰⁰

1- Arkansas Court Rules Volume II - missing and not returned to claimant - cost to claimant \$ 126.00; and,

1- Black's Law Dictionary 9th Edition - missing and not returned to claimant - cost to claimant \$ 149.00; and,

1- Prison Legal Guide (Post-conviction) - missing and not returned to claimant - cost to claimant \$ 159.89; and,

1- Federal Rules of Criminal Procedure - missing and not returned to claimant - cost to claimant \$ 49.95; and,

1- Prison Litigation Manual - missing and not returned to claimant - cost to claimant \$ 54.95; and,

1- Habeas Cite Book - missing and not returned to claimant - cost to claimant \$ 49.95; and,

1- Loophole - missing and not returned to claimant - cost to claimant \$ 6.95; and,

1- Tools of argument - missing and not returned to claimant - cost to claimant \$ 12.50; and,

1- Jailhouse Lawyer Manual 10th Edition - missing and not returned to claimant - cost to claimant \$ 16.95; and,

1- How to Sue your Dead Beat Attorney and Law Firm - missing and not returned to claimant - cost to claimant \$ 15.95; and

a total property loss to claimant of \$ 3155.29 not including damages of \$ 10,000.⁰⁰

REQUEST FOR ADMISSION NO 2: ADMIT THAT YOUR F-841 DATED NOVEMBER 22, 2019 IS CORRECT.

CLAIMANT'S RESPONSE TO RESPONDENT'S REQUEST FOR ADMISSION NO 2: DENY IN PART and ADMIT IN PART.

The Deny Answer: The Exhibit "A" F-841 dated November 22, 2019 submitted by Respondent failed to list all of claimant's property that was in claimant's cell on the night in Question.

Numerous items were not listed on said F-841 document nor were they returned to claimant.

ADMIT ANSWER: Claimant signed the F-841

when ORDERED to do so by Sgt Jenkins on November 22, 2019 under threat by Sgt. Jenkins that if "Claimant continued to argue about his missing property he would get NOTHING." Claimant signed the R-841 even though the items listed in Response No 1 were missing and not being returned.

REQUEST FOR ADMISSION NO 3: ADMIT THAT YOUR CLAIM 200909 IS AGAINST MAJ. RICHARDSON, OFC. SMITH, OFC. MALLARD, PERSONALLY, MENTIONED IN YOUR COMPLAINT, AND NOT THE ADC,

CLAIMANT'S RESPONSE TO RESPONDENT'S REQUEST FOR ADMISSION NO 3: DENY. This claim is not personally against the named defendants. These named individuals were acting under color of law and therefore are state actors. This claim is against all actors and ADC as their employer.

REQUEST FOR ADMISSION NO 4: ADMIT YOU ARE MAKING A DUE PROCESS CLAIM IN CLAIM 200909.

Claimant's Response to Respondent's Request for Admission No 4: DENY. Claimant stands on the merits of his claim.

REQUEST FOR ADMISSION NO 5; ADMIT THAT YOU VIOLATED ADC POLICY IN RELATION TO CLAIM 200909.

CLAIMANT'S Response to Respondent's Request for Admission NO 5;
ADMIT IN PART and DENY IN PART. Claimant admits that prior to the merits of the claims presented he did violate ADC policy and Denies that his violation of ADC's disciplinary policy had any bearing on the destruction of or failure of the ADC and its employees of destroying or failing to pack claimant's property or return to claimant his property.

REQUEST FOR ADMISSION NO 6; ADMIT THAT ADC ACTED PURSUANT TO POLICY.

CLAIMANT'S Response to Respondent's Request for Admission NO 6;
DENY. ADC did not act pursuant to its policy regarding to collecting, storage and return of an inmates property. ADC also threatened claimant when he complained about his missing property

REQUEST FOR ADMISSION NO 7; ADMIT THAT YOU HAVE ALL OF YOUR PROPERTY.

CLAIMANT'S Response to Respondent's Request for Admission NO 7;
DENY. See claimant's Response to Respondent's Request for

Admission No 1. Claimant further asserts that there were numerous batteries, radios, shirts (Tee), boxers and other items missing but has not listed each of these items.

REQUEST FOR ADMISSION NO 8: ADMIT THAT YOUR CLAIM IS WITHOUT MERIT.

CLAIMANT'S Response to Respondent's Request for Admission NO 8:
DENY. Claimant's claim is meritorious and deserves of adjudication. This claim is ripe for adjudication.

7. Claimant submits these amended responses to the Respondent's Request for Admissions as ordered by the Commission.


8. Claimant submitted to Respondent a set of Request for Admissions November 8, 2020 some 7½ months ago which the Respondent has failed to lift a finger to comply with Arkansas ~~the~~ Rule ~~of~~ of Civil Procedure Rule 36(a).

9. Claimant did at the onset attempt to answer the Respondent's Request honestly, truthfully and with all effort to comply with discovery.

10. The Respondent should be sanctioned by this

Commission for completely ignoring the Arkansas Rules of Civil Procedure as they are fully represented by counsel. Claimant would ask this Commission to sanction the Respondent with fines.

I, Kwasi McKinney declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and for the reason stated.

Respectfully submitted


Kwasi McKinney # 


STATE OF ARKANSAS)
COUNTY OF LEE)

SUBSCRIBED AND SWORN TO BEFORE ME, a
Notary Public this ___ day of _____ 2021.

My Commission Expires: _____ NOTARY

8-12-21

Kwasi McKinney to [REDACTED]

Arkansas State Claims Commission
101 E. Capitol Ave., Suite 410
Little Rock, AR 72201-3823

RE: McKinney to [REDACTED]

Arkansas Department of Corrections, Division of Corrections;
Claim no: 200909

1. Claimant's Motion for Immediate Injunction
2. Claimant's Brief in Support of Injunction

Dear Sir:

Please find enclosed 2 copies of Claimant's Motion for Immediate Injunction and Brief in Support for filing in the claim referenced above. Please return one copy of each with the markings of the Commission after filing.

Please notify me of any action taken by the Commission.

Cordially,

cc: file

Enclosure (2)

ARKANSAS STATE CLAIMS COMMISSION

Kwasi McKinney

CLAIMANT

v

NO: 200909

ARKANSAS DEPARTMENT OF CORRECTIONS,

DIVISION of Corrections

RESPONDENT

MOTION FOR AN IMMEDIATE
INJUNCTION

COMES NOW, Kwasi McKinney (the "Claimant") here in after, pro-se, and through this, his Motion for an immediate injunction, states as follows:

I

INTRODUCTION

Kwasi McKinney (the "Claimant") filed this claim against the Arkansas Department of Corrections, Division of Corrections (the "ADC") on March 4, 2020 seeking damages against respondent for their failure to properly collect, inventory, secure and return claimant's personal property, violating ADC's policies and procedures and claimant's liberty interest rights

(1)

II

ACTIONS of ADC OFFICIALS SINCE THE FILING OF THIS CLAIM

On July 2, 2021 I was processed by Sgt White/Jenkins, ("White") the property Sergeant of the [REDACTED], for placement in punitive isolation. Sgt. White began inventorying my personal property and when she came to my legal papers, I told Sgt ~~Jenkins~~ White I had need of my legal papers while in punitive isolation because I had legal actions ongoing. I told White I had my criminal case ongoing along with this small claims action. Sgt White responded and stated "You ain't got no cases going so I am storing all of your legal documents." Sgt. White did not allow me to take my legal papers to punitive Isolation per ADC's policy.

After my release from punitive isolation Sgt. T. Smith brought 2 property bags to me and dumped them in my cell and said "there is your property". I ask Sgt T. Smith to inventory my property in my presense but Sgt. T. Smith refused. Sgt. T. Smith did not even have a form F-841

to show what property was returned to me on that date. When I started sorting out my property I noted all of my legal documents, pleadings, transcripts, responsive pleadings, letters and such along with numerous magazines.

I have written numerous requests to Sgt. White, Warden Lay, Sgt T. Smith and Warden Jackson to return or order the return of my legal mail, documents and such but all efforts have been ignored by ADC officials.

RELIEF


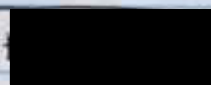

Claimant suggests this confiscation of all my legal documents, mail and such was done in a retaliatory manner by Sgt White and ADC officials. I am at wits end about my legal documents and am not hampered at pursuing both my criminal case as well as this small claims case.

WHEREFORE, I Kwasi McKinney request this Commission issue an Injunctive Order Commanding ADC officials immediately return to me all of my legal documents, pleadings, transcripts, letters, responsive pleadings, and such, post

(3)

haste or in the alternative hold a hearing to determine the reason why ADC will not return the legal documents or any other sanction this Commission deems appropriate and just.

Respectfully submitted


Kwasi McKinney 


STATE OF ARKANSAS)
COUNTY OF LEE)

SUBSCRIBED AND SWORN TO BEFORE ME, a
Notary Public this _____ day of _____ 2021.


My Commission Expires

Notary

CERTIFICATE OF SERVICE

I, Kwasi McKinney do hereby certify that on this 12
day of August 2021, I have served on
(4)

Respondent through Attorney Thomas Burns, at 6814
Princeton Pike, Pine Bluff, AR 71620 a true copy
of my Motion for immediate Injunction by
placing same in the U.S. Mailbox provided with
sufficient postage affixed to ensure delivery.


Kwasi McKinney # [REDACTED]

ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY

CLAIMANT

v

Claim No: 200909

ARKANSAS DEPARTMENT OF CORRECTIONS,
DIVISION OF CORRECTIONS

RESPONDENT

BRIEF IN SUPPORT OF IMMEDIATE
INJUNCTION

COMES NOW, Kwasi McKinney (the "Claimant") here in
after, pro-se, and through this his brief in Support of
Immediate Injunction, states as follows:

I

INTRODUCTION

Kwasi McKinney (the "Claimant") filed this claim against
the Arkansas Department of Corrections, Division of Corrections
(the "ADC") on March 4, 2020 seeking damages against
respondent for the failure to properly collect, inventory,
secure and return claimant's personal property violating
ADC's policies and procedures and claimant's liberty
interest rights.

(1)

II

STANDARD FOR INJUNCTIVE

RELIEF

In deciding whether to grant injunctive the Court or Commission must consider the following factors:

- 1) the threat of irreparable harm to the movant;
- 2) the state of balance between the harm and the injury that granting the injunction will inflict on the other party litigants;
- 3) the probability that the movant will succeed on the merits; and
- 4) the public interest.

Dataphase Systems, Inc v C.L. Systems, Inc, 640 F.2d 109, 113 (8th Cir 1981) (en banc). No single factor is dispositive, but the movant must establish a threat of irreparable harm. Id.

Without such a finding, a preliminary injunction should not be issued. Randolph v Rodgers, 170 F.3d 850, 856 (8th Cir 1999). "The burden of proving that a preliminary injunction should be issued rests entirely with the movant".

Goff v Harper, 60 F.3d 518, 520 (8th Cir 1995). The Goff court also addressed the district

court's role in inmate applications for injunctive relief as follows: "[I]n the prison context, a request for injunctive relief must always be viewed with great caution because 'judicial restraint is especially called for in dealing with the complex and intractable problems of prison administration.'"

... [T]he courts should not get involved unless either

a constitutional violation has already occurred or the threat of such a violation is both real and immediate." Id at 520-21, (quoting Rogers v Scurr, 676 F.2d 1211, 1214 (8th Cir 1982)),

III

ANALYSIS

A. Scope of Injunction

Before addressing the Dotaphase factors, Claimant sets out the injunctive relief he is requesting is very direct and exact. Claimant seeks an ORDER commanding the respondents to return his legal documents confiscated and stored on July 2, 2021 by Sgt White which documents of a legal nature have not been returned to Claimant. Claimant asserted these legal documents are related to his ongoing criminal case and this claim and are necessary to continue his pursuit of adjudication of these legal matters.

B. Dotaphase Factors

An application of the Dotaphase factors to the instant Motion confirms that preliminary injunctive relief is in fact warranted. Specifically, Claimant has carried his burden of establishing that irreparable harm will befall him, the dismissal of his ongoing legal cases, if the legal documents are not returned in the absence of the requested injunctive relief. This is a sufficient

ground - on its own - to grant the motion for preliminary injunction. Destephane, 640 F.2d at 114 n 9.

A preliminary injunction is appropriate to grant intermediate relief "of the same character of that which may be granted finally," but is inappropriate for dealing with matters "lying wholly outside the issues in the suit." De Beers Consol Mines Ltd. v United States, 325 US 212, 220 (1945).

Claimant has clearly established that the Respondents have most probably confiscated and failed to return Claimant's legal documents in an effort to interfere with Claimant's pursuit of this claim and pursuit of his freedom from incarceration. Retaliation for bringing this small claim for damages fall well within the inside of Claimant's Pleadings.

Claimant has further established that there is a very good likely hood he will prevail with this small claim against the respondent. The respondent has destroyed or lost or failed to return some \$3155.²⁹ of his personal property whereby violating Claimant's liberty interest in having his property.

For these reasons, Claimant has carried his burden of showing injunctive relief should be issued.

IV

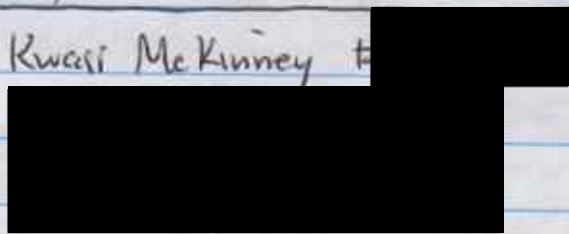
CONCLUSION

Claimant's Motion for injunctive relief should be
and therefore must be granted.

Respect fully submitted

K L

Kwasi McKinney to



STATE OF ARKANSAS)
COUNTY OF LEE)

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary
Public this _____ day of _____ 2021,



My Commission Expires:

NOTARY

CERTIFICATE OF SERVICE

I, Kwasi McKinney do hereby certify that on this 12

day of August 2021 I have served a true copy
of my Brief in Support of Motion for Immediate Injunction
on Attorney Thomas Burns, at 6814 Princeton Pike, Pine
Bluff, AR 71620 by placing same in the U.S. Mail box
provided with sufficient postage affixed to ensure delivery.


Kwasi McKinney # 

(6)

Kunsi McKinney # [REDACTED]
[REDACTED]

Arkansas State Claims Commission
101 E. Capitol Ave. Suite 410
Little Rock, AR 72201 - 3823

RE: McKinney # [REDACTED]

v

ARKANSAS DEPARTMENT OF CORRECTIONS,
Division of Corrections
claim NO: 200909

DEAR SIR:

Please find enclosed my Motion for sanctions for filing
in the above Referenced claim. After filing please
return one copy to me with the file markings of
the Commission.

Thank you for your assistance in advance.

Cordially

cci file
Enclosure (2)

ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY

CLAIMANT

v

Claim No: 200909

ARKANSAS DEPARTMENT OF CORRECTIONS,
DIVISION OF CORRECTIONS

RESPONDENT

MOTION FOR SANCTIONS

PURSUANT TO FEDERAL RULES OF CIVIL
PROCEDURE RULE 37(b)

COMES Now, Kwasi McKinney (the "Claimant") here in after, pro-se, and through this his Motion for Sanctions pursuant to Federal Rules of Civil Procedure Rule 37(b), states as follows:

1. The Claimant filed his claim on March 4, 2020 seeking \$5,000.⁰⁰ in lost property.
2. The Respondent filed a motion to dismiss, which was duly denied by the Arkansas State Claims Commission (the "Commission") on October 20, 2020. As a part of that ORDER denying the motion to dismiss, the parties were instructed to begin discovery.

(1)

3. Respondent sent requests for admissions to Claimant on November 3, 2020.

4. On November 9, 2020 Claimant did file a response to Respondent's request for admissions. Along with his response, claimant served on Respondent; 1) Claimant's First set of Request for Admissions to Respondent; and 2) Claimant's First set of Requests For Production of Documents'.

5. The Claimant did not respond exactly as law required, even though a response was made, the Respondent sought the Commission to to grant a Motion to deem admitted the Respondent's request for admissions.

6. The commission on June 15, 2021 deny the Respondent's Motion to deem- admitted and also Claimant's Motion for summary judgment.

1. The Claimant's Request for Admissions and Request for Production of documents were filed simultaneously with the Commission.

7. The Commission ORDERED (emphasis added) the parties to continue discovery.

8. The Respondent was due to Respond to Claimants Request for Admissions and Request for Production of Documents by December 15, 2020.

9. Even concluding the Respondents misconstrued the idea that the proceedings were in abeyance, the Commission ORDERED both parties to continue discovery on June 15, 2021 making any discovery due within 30 days, by July 15, 2021. Claimant is being lenient.

10. Claimant contacted Respondent on July 20, 2021 seeking discovery and as of Today has received no discovery. (See Claimants Exhibit "C" attached hereto).

11. Respondent has knowingly and intentionally violated the rules of discovery and has ignored the ORDER of this Commission. Respondent has failed to disclose information required by the automatic disclosure rule.



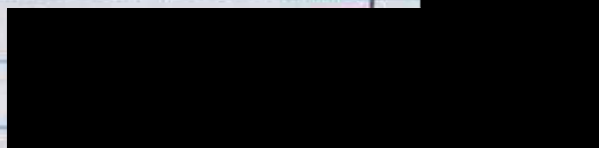
12. Claimant requests this Commission sanction
(3)

the Respondent for refusing to comply with the ORDER of this Commission as well as the Rules of discovery.

13. Claimant seek an ORDER of this Commission for a Judgment in Favor of Claimant in the amount of \$5000⁰⁰ as a sanction for Respondents intentional failure to comply.

WHEREFORE, Kwasi McKinney requests this Commission grant this his Motion for Sanctions, enter a Judgment of \$5,000.⁰⁰ in favor of Complainant and any other relief this Commission deems appropriate.

Respectfully submitted


Kwasi McKinney 


STATE OF ARKANSAS)
COUNTY OF LEE)

SUBSCRIBED AND SWORN TO BEFORE ME, a
Notary Public this _____ Day of _____ 2021.

My Commission Expires:

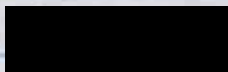
Notary

(4)

CERTIFICATE OF SERVICE

I, Kwasi McKinney do hereby certify that on this 13 day of August 2021 I have served a true copy of my Motion for Sanctions on Attorney Thomas Burns, at 6814 Princeton Pike, Pine Bluff, AR 71602 by placing same in the U.S. Mail box provided with sufficient postage affixed to ensure delivery.



Kwasi McKinney 

CLAIMANT'S EXHIBIT "C"

Letter of July 10, 2021 to
Respondent via Attorney of
Record.

(6)

COPY

Kwasi McKinney # [REDACTED]
[REDACTED]

July 10, 2021

Attorney Thomas Burnes
6814 Princeton Pike
Pine Bluff, Ar 71602

RE: McKinney # [REDACTED]

v

Arkansas Department of Corrections,
Division of Corrections
Claim No: 200909

Sir:

As of today July 10, 2021 I have not received a response to my Request for Admissions and Request for Production of Documents in the above referenced small claims filed November 9, 2020.

The Court has even ordered you to disclose. (See June 15, 2021 order at 10.) In truth the responses were due in December 2020. I await your responses.

Cordially

cc: file

(7)

170

From: [Misty Scott](#) on behalf of [ASCC Pleadings](#)
To: [Thomas Burns](#)
Cc: [Roni Gean](#); [ASCC Pleadings](#); [Kathryn Irby](#)
Subject: ORDER: Kwasi McKinney v. ADC, Claim No. 200909
Date: Friday, December 10, 2021 3:09:50 PM
Attachments: [Kwasi McKinney v. ADC2 .pdf](#)
[Kwasi McKinney-order2.pdf](#)

Thomas:

Please see attached. Contact Kathryn Irby with any questions.

Thank you,

Misty

Misty Scott
Arkansas State Claims Commission

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

December 10, 2021

Mr. Kwasi McKinney (ADC [REDACTED])
[REDACTED]
[REDACTED]

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602-9411

(via email)

Re: ***Kwasi McKinney v. Arkansas Division of Correction***
Claim No. 200909

Dear Mr. McKinney and Mr. Burns:

Enclosed please find an Order entered on December 7, 2021, by the Arkansas State Claims Commission. If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: msscott

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY (ADC ████████)

CLAIMANT

V.

CLAIM NO. 200909

**ARKANSAS DIVISION OF
CORRECTION**

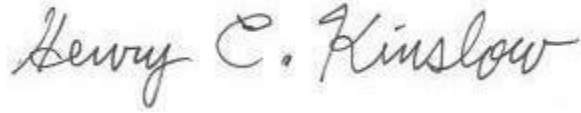
RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) are two motions filed by Kwasi McKinney (the “Claimant”) related to Claimant’s claim against the Arkansas Division of Correction (the “Respondent”). Based upon a review of the motions, the arguments made therein, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. Claimant filed his claim on March 4, 2020, seeking damages for lost property.
2. Respondent filed a motion to dismiss, which was denied by the Claims Commission on October 20, 2020. As part of that order denying the motion to dismiss, the parties were instructed to begin discovery.
3. Claimant subsequently filed a motion for immediate injunction. However, the Claims Commission is not authorized to grant such relief and must DENY Claimant’s motion. *See* Ark. Code Ann. § 19-10-201, *et seq.* Claimant will have to seek injunctive relief from the courts.
4. Claimant also filed a motion for sanctions related to Respondent’s alleged failure to respond to the requests for admission and requests for production propounded by Claimant. However, Claimant’s motion does not comply with Ark. R. Civ. Proc. 37, such that the Claims Commission must DENY the motion.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird
Dexter Booth
Henry Kinslow, Co-Chair
Paul Morris, Co-Chair
Sylvester Smith

DATE: December 7, 2021

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

MAR 09 2022

RECEIVED

March 6, 2022

Re: Kwasi McKinney v. Arkansas Division of Correction
Claim No. 200909

Dear Arkansas State Claim Commission:

I would like to rest my case. I have no more motions I intend to file. Could the Claim Commission please set a hearing on the above style case number.

Kwasi McKinney # [REDACTED]
[REDACTED]

From: [Kathryn Irby](#)
To: [Thomas Burns \(DOC\)](#)
Cc: [Roni Gean \(DOC\)](#)
Subject: HEARING SCHEDULED: McKinney v. ADC, Claim No. 200909
Date: Wednesday, March 9, 2022 3:06:00 PM
Attachments: [McKinney v. ADC -- 200909 -- hearing letter.pdf](#)

Thomas, please see attached.

Thanks,
Kathryn

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

March 9, 2022

Mr. Kwasi McKinney (ADC [REDACTED])
[REDACTED]
[REDACTED]

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602-9411

(via email)

RE: ***Kwasi McKinney v. Arkansas Division of Correction***
Claim No. 200909

Dear Mr. McKinney and Mr. Burns,

The Claims Commission has received Mr. McKinney's notification that discovery is concluded and that the claim is ready for hearing. As such, the Claims Commission has scheduled this claim for hearing on Thursday, June 16, 2022, beginning at 9:00 a.m, to give Mr. Burns time to conclude any other needed discovery. All parties will attend via Zoom. The Zoom invitation is enclosed, and the Claims Commission asks that Mr. Burns provide the Zoom invitation to Mr. McKinney's unit.

Each party's witness lists, exhibit lists, and exhibits are due by Thursday, May 5, 2022. If the parties would like for the Claims Commission to review prehearing briefs, the briefs are due at the same time.

If Claimant would like to call other inmates or ADC employees as witnesses, Claimant will need to submit subpoena requests by May 5, 2022. The subpoena requests must include the witnesses' names and addresses. If ADC objects to issuance of any subpoena, ADC will have until Tuesday, May 10, 2022, to file detailed objections to the witness's proposed testimony.

If Claimant would like to call a witness outside of ADC, Claimant will need to arrange for that witness's virtual attendance at the hearing. Claimant can direct the witness to contact the

Claims Commission for the Zoom invitation. If a subpoena will be necessary to compel a witness's testimony, Claimant will need to submit a subpoena request by May 5, 2022. The subpoena request must include the witness's name and address. Once the Claims Commission issues the subpoena, Claimant will need to have the subpoena served upon the witness pursuant to Rule 45 of the Arkansas Rules of Civil Procedure.

If Respondent will require subpoenas in order to compel the testimony of any of its witnesses, those subpoena requests are also due on May 5, 2022.

Absent good cause shown, any subpoena requests received after May 5, 2022, will be denied.

To the extent that either party intends to file a motion of any kind, absent a showing of good cause, the motion must be submitted in sufficient time to allow the motion to be fully briefed by May 5, 2022.

Please note that a copy of any subpoena requests, witness lists, exhibit lists, and exhibits must be served upon the opposing party via U.S. Mail in accordance with the Arkansas Rules of Civil Procedure.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: kmirby

The Claims Commission is inviting you to a scheduled Zoom meeting.

Topic: Claims Commission -- hearings

Time: Jun 16, 2022 09:00 AM Central Time (US and Canada)

Join Zoom Meeting

<https://us06web.zoom.us/j/84188580665?pwd=MHdCUHhjS2RwSFFYnJhKdXBiSDlqdz09>

Meeting ID: 841 8858 0665

Passcode: hn8UgY

One tap mobile

+13126266799,,84188580665#,,,*476410# US (Chicago)

+19294362866,,84188580665#,,,*476410# US (New York)

Dial by your location

+1 312 626 6799 US (Chicago)

+1 929 436 2866 US (New York)

+1 301 715 8592 US (Washington DC)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

Meeting ID: 841 8858 0665

Passcode: 476410

Find your local number: <https://us06web.zoom.us/u/kbsCOcaVeE>

From: [Kathryn Irby](#)
To: [Thomas Burns \(DOC\)](#)
Cc: [Roni Gean \(DOC\)](#)
Subject: RE: HEARING SCHEDULED: McKinney v. ADC, Claim No. 200909
Date: Wednesday, March 9, 2022 3:09:00 PM
Attachments: [mckinney-requesting hearing.pdf](#)

Attached.

Thanks,
Kathryn

From: Thomas Burns (DOC) <Thomas.Burns@arkansas.gov>
Sent: Wednesday, March 9, 2022 3:09 PM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Cc: Roni Gean (DOC) <Roni.Gean@arkansas.gov>
Subject: RE: HEARING SCHEDULED: McKinney v. ADC, Claim No. 200909

Would you mind sending us whatever correspondence Mr. McKinney sent the commission? We do not have anything

-TB
Legal Division
Arkansas Department of Corrections
Division of Correction

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Wednesday, March 9, 2022 3:06 PM
To: Thomas Burns (DOC) <Thomas.Burns@arkansas.gov>
Cc: Roni Gean (DOC) <Roni.Gean@arkansas.gov>
Subject: HEARING SCHEDULED: McKinney v. ADC, Claim No. 200909

Thomas, please see attached.

Thanks,
Kathryn

MAR 17 2022

RECEIVED

Before the Arkansas State Claims Commission

Kwasi McKinney (Doc # [REDACTED]) Claimant

v.

No: 200909

Arkansas Division of Corrections Respondent

Motion for Issuance of Subpoenas

Comes Now, Kwasi McKinney ("Claimant") here in after, pro-se and through this Motion for Issuance of Subpoenas, states as follows:

1. That the Claimant ask this Commission to set a hearing on his claim in the above style case.
2. The Claimant asserts the below listed witnesses have fact evidence that is pertinent to his claim and the commission should in seeking justice, order these witness to appear and give testimony under oath and on the record.

A. Sgt. Jenkins/White

[REDACTED] Property Officer

B. Sgt. Palmer

[REDACTED] Sergeant

C. Cpl. Mallard

[REDACTED]

9/8 2019

Night Shift

D. Cpl. Smith

[REDACTED]

9/8 2019

Night Shift

E. Cpl. Craig

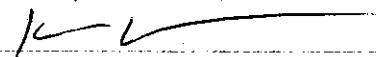
[REDACTED]

9/8 2019

Night Shift.

WHEREFORE, Kwasi McKinney request this Commission issue Subpoena for the list of witnesses and serve on said witnesses and any other relief this Commission deems appropriate and just.

Respectfully Submitted



Kwasi McKinney # [REDACTED]

[REDACTED]

APR 04 2022

RECEIVED

Before The Arkansas State Claims Commission

Kwasi McKinney (ADC [REDACTED])

Claimant

v

ND: 200909

Arkansas Department of Corrections

Division of Correction

Respondent

Claimants' Brief and Exhibits

Comes Now, Kwasi McKinney, ("Claimant") herein after, pro-se and through this his brief and Exhibits state as follow:

1. Claimant asserts that he was deprived the opportunity to prevail in his criminal case because the loss of his legal books and other legal materials.
2. Claimant direct appeal was reversed and remanded, (Ex#1a)
3. After Ms. Jenkins/White lost Claimant property which contained his legal books and legal material and transcripts, Claimant case has been down hill since.
4. Claimant Rule 37 petition (Ex#2a) was his last chance to prevail in state court and only chance to argue ineffective assistance of Counsel.

4

5. Claimant Rule 37 Petition was dismissed (Ex#3a) for procedure defaults, which could have been prevented if he had his legal books and other legal material.

6. Claimant is a pro-se litigant, so his legal books and legal materials was very essential for him to succeed on his case.

7. The following exhibits are some of the Claimants post-conviction court orders, between October 2019 and January 2022, that has been denied or dismissed because the loss of his legal books and other legal material.

(Ex#4) Petition for Error Coram Nobis; Denied and Dissent

(Ex#5) Petition for Error Coram Nobis; Denied and Dissent

(Ex#6a) Order denying Habeas Corpus relief

(Ex#7) Affidavit written by perpetrator

(Ex#8) Order denying Petition for Reduction of Sentence

(Ex#9) Order denying motion to Recuse

(Ex#10) Complaint against Judge; Dismissed

(Ex#11a) Order denying Motion to Amend Rule 37 Petition

(Ex#12a) Order denying Motion to Supplement Rule 37 Petition

(Ex#13) Order denying Motion to Recall Mandate

8. Claimant asserts that if he had all of his legal material and legal books, he would've had a better chance succeeding in his

case as before on his direct appeal.

9. Sgt. Jenkins/white is hold half of claimant legal work, Emails, pictures, catalays and more hostage in her office or the property room.

10. Sgt. Jenkins/white claims that Claimant has excessive amount of legal work.

11. Sgt. Jenkins/white claims that Claimant cannot possess all of his legal work because he has no open cases.

12. Claimant tried to obtain certain documents from his stored property that pretains to this claim to no avail. (Ex[#]14~~0~~) and (Ex[#]15~~0~~).

13. Claimant receipts to the books that he bought are in his stored property.

14. Claimant family had to send a print out via mail, the cost of his transcripts (Ex[#]16) and (Ex[#]17a)

15. It will cost Claimant over \$3,000 to get another copy of his transcript

WHEREFORE Claimant Kwasi McKinney is asking to be compensated \$10,000 in damages and \$3,155.59 for loss of property and anything else that this commission deems appropriate.

Respectfully Submitted
Kwasi McKinney

ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-17-264

KWASI ANDRADE MCKINNEY
APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 10, 2018

APPEAL FROM THE COLUMBIA
COUNTY CIRCUIT COURT
[NO. 14CR-16-35]

HONORABLE DAVID W. TALLEY, JR.,
JUDGE

AFFIRMED IN PART; REVERSED AND
REMANDED IN PART

LARRY D. VAUGHT, Judge

On November 10 and 24, 2015, law-enforcement officers worked with two confidential informants to purchase methamphetamine from appellant Kwasi McKinney at his residence located at [REDACTED]. Thereafter, on January 28, 2016, pursuant to a search warrant, law-enforcement officers searched McKinney's home and found methamphetamine, drug paraphernalia, and a firearm. On November 29, 2016, a Columbia County jury found McKinney guilty of delivery of methamphetamine, possession of methamphetamine, maintaining a drug premises, simultaneous possession of drugs and a firearm, possession of methamphetamine with intent to deliver, and possession of a firearm

by certain persons.¹ He was sentenced to serve twenty-eight years,² six years', eighteen years', sixty years', thirty years', and twelve years' imprisonment, respectively, to be run consecutively, for a total of 154 years. On appeal, McKinney contends that (1) there was insufficient evidence to support the convictions for simultaneous possession of drugs and a firearm and for possession of a firearm; (2) the circuit court abused its discretion in ordering consecutive sentences; and (3) the circuit court abused its discretion in denying his request for a pretrial hearing. We affirm in part and reverse and remand in part.

McKinney argues that the evidence was insufficient to support his convictions for simultaneous possession of drugs and a firearm and for possession of a firearm.³ More specifically, he argues that the proof failed to establish that he constructively possessed these items. He cites the testimony of Officer Jonathan Chambers of the Thirteenth Judicial Drug Task Force who stated that there were two other men, Sharde Mullins and Jaylon McKamie, in the home at the time of the search. Chambers also testified that these two men could have placed the drugs and firearm in the closet, but they were not investigated, and the firearm and drugs were not submitted to the crime lab for latent-print testing. Based on this evidence,

¹The jury also found McKinney guilty of second-degree endangering the welfare of a minor; however, this conviction was dismissed on the State's motion.

²McKinney was sentenced to eighteen years' imprisonment for the delivery-of-methamphetamine conviction plus an enhancement of ten years' imprisonment for committing the crime in proximity to certain facilities (a church) for a total of twenty-eight years.

³In this appeal, McKinney does not challenge the sufficiency of the evidence supporting the convictions for delivery of methamphetamine, possession of methamphetamine, maintaining a drug premises, and possession of methamphetamine with intent to deliver.

McKinney argues, "It is not beyond the realm of possibility that someone else planted [the firearm and drugs] there and left [McKinney to] take the fall and face the consequences."

In order to preserve for appeal the issue of the sufficiency of the evidence, a defendant must first raise the issue to the circuit court as provided in Arkansas Rule of Criminal Procedure 33.1. Rule 33.1(a) provides that, in a jury trial, a defendant must challenge sufficiency by a specific motion for directed verdict at the close of the evidence offered by the prosecution and at the close of all the evidence. Ark. R. Crim. P. 33.1(a) (2017). A defendant's failure to raise the issue at the times and in the manner required by the rule will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the judgment. Ark. R. Crim. P. 33.1(c).

A motion for directed verdict is inadequate if it states "that the evidence is insufficient [and] does not preserve for appeal issues relating to a specific deficiency such as insufficient proof on the elements of the offense." *Gillard v. State*, 372 Ark. 98, 101, 270 S.W.3d 836, 838 (2008) (citing Ark. R. Crim. P. 33.1(c); *Smith v. State*, 367 Ark. 274, 239 S.W.3d 494 (2006)). The motion must specifically advise the circuit court as to how the evidence was deficient. *Id.*, 270 S.W.3d at 838. The reason underlying this requirement that specific grounds be stated and that the absent proof be pinpointed is that it allows the circuit court the option of either granting the motion or, if justice requires, allowing the State to reopen its case to supply the missing proof. *Id.*, 270 S.W.3d at 838-39. We will not address the merits of an appellant's insufficiency argument where the directed-verdict motion is not specific. *Id.*, 270 S.W.3d at 839.

In the present case, McKinney made the following motions for directed verdict:

I don't believe that there was sufficient evidence that demonstrated or proved that [McKinney] in any way possessed specifically a firearm in this case, therefore the jury could not declare that he would be guilty of simultaneous possession of drugs and firearms.

I don't believe that the State demonstrated or showed or met their burden in regard to the gun and that [McKinney] in any way possessed a firearm. Therefore, a jury could not conclude that he could be guilty of possession of a firearm.

McKinney's motions for directed verdict merely stated that he did not possess the firearm. He did not argue below that the State failed to prove that he constructively possessed the firearm. Under these circumstances, we hold that McKinney's motion was too general to preserve the constructive-possession argument he has raised on appeal. *Conley v. State*, 2011 Ark. App. 597, at 6-7, 385 S.W.3d 875, 878-79 (holding that the appellant failed to preserve his sufficiency argument where he argued in his motions for directed verdict that the State failed to prove possession of drugs and drug paraphernalia but argued on appeal that the State failed to establish constructive possession). Accordingly, we affirm on the issue of the sufficiency of the evidence supporting McKinney's convictions for simultaneous possession of drugs and a firearm and possession of a firearm by certain persons.

McKinney also argues on appeal that the circuit court abused its discretion in ordering consecutive sentences. After the jury returned its guilty verdicts and sentencing recommendation, the State requested that the circuit court sentence McKinney to twenty-four years of suspended imposition of sentence (SIS) for the possession-of-methamphetamine and delivery-of-methamphetamine convictions and to order that the sentences for the remaining convictions (possession of a firearm by certain persons, maintaining a drug premises, simultaneous possession of drugs and a firearm, and the proximity enhancement), which

totaled 130 years, be run consecutively. McKinney's counsel did not respond or object. Thereafter, the circuit court found that it lacked authority to order SIS where the defendant had been determined to be a habitual offender, and it concluded that it would follow the jury's sentencing recommendations. The court then stated that the jury had spent "quite a bit of time deliberating on this. Obviously, they had different thoughts about different sentences," and ordered that the sentences run consecutively for a total of 154 years. McKinney did not object.

In order to preserve an argument for appeal there must be an objection in the circuit court that is sufficient to apprise that court of the particular error alleged. *Brown v. State*, 326 Ark. 56, 60, 931 S.W.2d 80, 83 (1996). Further, we will not address arguments raised for the first time on appeal. *Id.*, 931 S.W.2d at 83. Our supreme court has specifically stated that when an appellant did not object to his or her terms of imprisonment being imposed consecutively, the court would not address the argument on appeal. *Id.*, 931 S.W.2d at 83 (citing *Richardson v. State*, 314 Ark. 512, 863 S.W.2d 572 (1993)).

In the instant case, McKinney raised no objection to the State's request that his sentences run consecutively or to the circuit court's ruling that his sentences run consecutively. The alleged error should have been called to the attention of the circuit court by timely objection or inquiry so that the court could be given the opportunity to correct the error. Therefore, we hold that McKinney's sentencing argument is not preserved for appeal. *Brown*, 326 Ark. at 60, 931 S.W.2d at 83; *Mixon v. State*, 330 Ark. 171, 174, 954 S.W.2d 214, 216 (1997) (holding that in order to preserve a challenge to the circuit court's decision to run sentences consecutively, the appellant must make an objection in circuit court). Accordingly, we affirm the circuit court's decision to run McKinney's sentences consecutively.

McKinney's final argument on appeal is that the circuit court abused its discretion in denying his request for a pretrial hearing. On October 13, 2016, McKinney filed five pretrial motions: a motion to suppress statement, a motion to suppress search, a motion to compel testing of certain evidence, a motion for reconsideration or in the alternative to reduce bail, and a motion in limine. On November 8, 2016, counsel for McKinney requested a hearing on the motions, and the State objected the following day.

No hearing was held, and on November 14, 2016, the circuit court entered an order denying the motions to suppress the statement, to suppress the search, and to compel testing, finding that they were untimely.⁴ The court found that McKinney had appeared on two occasions (July 7, 2016, and August 18, 2016) and announced he was ready for trial. Before the jury trial started, counsel for McKinney moved for reconsideration, stating that by announcing for trial, he did not intend to waive the right to a hearing on his pretrial motions. The court reiterated its finding that McKinney had twice announced that he was ready for trial and that the motion requesting the testing of evidence could not be performed before trial. The court denied the motion for reconsideration.

On appeal, McKinney argues that, pursuant to Arkansas Rule of Criminal Procedure 16.2(b), a motion to suppress evidence is timely if filed ten days before trial. Ark. R. Crim. P.

⁴The court also denied the motion for reconsideration or in the alternative to reduce bail, stating that it had thoroughly considered the issue at the October 6, 2016 bond hearing. The court took the motion in limine under advisement. The disposition of these two motions is not in dispute on appeal.

16.2(b) (2017). He contends that he filed his suppression motions⁵ well before that; therefore, the circuit court abused its discretion in denying his motion based on untimeliness.

The State first argues that, based on Rule 16.1 of the Arkansas Rules of Criminal Procedure, Rule 16.2 does not apply because this was a criminal prosecution in which the omnibus-hearing procedure was utilized. Ark. R. Crim. P. 16.1 (2016). However, the record in this case does not demonstrate that an omnibus hearing was set and/or held. Therefore, Rule 16.2 does apply. And based on Rule 16.2, McKinney's motions to suppress—filed forty-seven days before trial—were timely filed. Therefore, we hold that the circuit court abused its discretion in finding that the motions to suppress were untimely.

McKinney further contends that he was entitled to a hearing on his suppression motions. While Rule 16.2 does not mandate a pretrial hearing on suppression motions, at the very least, our statutory and case law mandates a hearing on the motion to suppress the statement. *Coon v. State*, 76 Ark. App. 250, 254, 65 S.W.3d 889, 891 (2001). "A hearing is mandatory on a motion to suppress, and the supreme court has said that a defendant is not required to question the admissibility of his pretrial statements more than once." *Id.* at 254, 65 S.W.3d at 891. Likewise, in *Rankin v. State*, our supreme court held that the circuit court erred when it admitted the defendant's custodial statements without conducting a hearing on the defendant's suppression motion, as it had been requested to do. 329 Ark. 379, 399–400, 948 S.W.2d 397, 408 (1997). The holding there relied on Arkansas Code Annotated section 16-89-107(b)(1) (1987), which provided in mandatory terms that a circuit court must hold a hearing

⁵His argument on appeal does not include his motion to compel testing of certain evidence; accordingly, he has abandoned any argument related to this motion.

on a motion to suppress a statement. *See also Greene v. State*, 335 Ark. 1, 29–30, 977 S.W.2d 192, 206 (1998) (holding that, based on Arkansas Code Annotated section 5-2-309(c) (Repl. 1997), a pretrial hearing is required when a defendant contests a mental evaluation).

Based on the above, McKinney was entitled to a hearing on his motion to suppress his statement, and the circuit court abused its discretion in denying his request. We do not extend this holding to McKinney's motion to suppress the search, as there is no statutory authority mandating a pretrial hearing on such a motion.

As a final argument, the State contends that if the circuit court erred in denying the motion to suppress McKinney's statement, the error was harmless beyond a reasonable doubt. The State contends that McKinney, in his statement, revealed information about his methamphetamine trade, but he did not confess to any facts surrounding the charges he faced at trial. For instance, he did not confess to the November 10 or 24, 2015 drug transactions or to possessing any of the evidence obtained in the search of his home on January 28, 2016. The State argues that the information in the statement was cumulative of the testimony of other witnesses at trial; thus, the error was harmless.

Illegally obtained evidence that is erroneously admitted is subject to the constitutional harmless-error analysis. *Schalski v. State*, 322 Ark. 63, 69–70, 907 S.W.2d 693, 697 (1995) (citing *Valby v. Connecticut*, 375 U.S. 85 (1963)). Before a federal constitutional error can be held harmless, this court must declare it harmless beyond a reasonable doubt. *Schalski*, 322 Ark. at 70, 907 S.W.2d at 697 (citations omitted).

In the case at bar, there was overwhelming evidence to support the jury's findings that McKinney sold drugs to the confidential informants on November 10 and 24, 2015. The

informants and Officer Chambers, who participated in the drug transactions, testified that McKinney sold them drugs, and there were videos of the transactions. Therefore, the admission of McKinney's statement was harmless error beyond a reasonable doubt as to the convictions for delivery of methamphetamine and possession of methamphetamine, and we affirm those convictions.

However, we cannot reach the same conclusion regarding the remaining convictions for maintaining a drug premises, simultaneous possession of drugs and a firearm, possession of methamphetamine with intent to deliver, and possession of a firearm by certain persons. While McKinney's statement did not include admissions on these charges, his statement did detail his drug business, and the jury could have found that he possessed the firearm and drugs at his house as part of his drug business. Therefore, we cannot conclude that the admission of the statement—as it relates to his convictions for maintaining a drug premises, possession of methamphetamine with intent to deliver, simultaneous possession of drugs and a firearm, and possession of a firearm by certain persons—was harmless beyond a reasonable doubt.

In conclusion, we affirm McKinney's convictions for delivery of methamphetamine and possession of methamphetamine. However, we hold that the circuit court abused its discretion in denying McKinney's motions to suppress his statement and the search based on untimeliness. Therefore, we reverse and remand the circuit court's order denying McKinney's suppression motions. We also hold that the circuit court abused its discretion in denying McKinney's request for a hearing on his motion to suppress his statement and that this was not harmless error.

On remand, we direct the circuit court to rule on the merits of McKinney's motion to suppress the search. We further direct the circuit court to hold a hearing on the record for the limited purpose of considering the arguments and allegations presented in McKinney's pretrial motion to suppress his statement. If, after ruling on the motion to suppress the search and/or at the conclusion of the hearing on the motion to suppress the statement, the circuit court determines that either or both motions have merit, the court should suppress the search and/or statement and order a new trial on the charges of maintaining a drug premises, simultaneous possession of drugs and a firearm, possession of methamphetamine with intent to deliver, and possession of a firearm by certain persons. If the circuit court determines that the motions lack merit, a new trial will not be required and these convictions will be affirmed. *Rankin*, 329 Ark. at 401, 948 S.W.2d at 408; *see also Bell v. State*, 324 Ark. 258, 262, 920 S.W.2d 821, 823 (1996).

Affirmed in part; reversed and remanded in part.

GLADWIN and MURPHY, JJ., agree.

In the Circuit Court of Columbia County, Arkansas

Fifth Division

FILED
Stephanie Brown
2019 DEC 12 PM 1:57

State of Arkansas

Plaintiff/Respondent

Vs.

No. 14CR-16-35

Kwasi McKinney

Defendant/ Petitioner

Petition for Relief Under Ark. R. Crim. P. 37.1

The defendant-petitioner petitions the court for a new trial of the case against him under Ark. R. Crim. P. 37.1 and he states as follows:

McKinney was charged with delivery of methamphetamine, possession of methamphetamine, maintaining a drug premises, simultaneous possession of drugs and firearm, possession of methamphetamine with intent to deliver, possession of firearm by certain person and proximity to certain facilities. On November 29, 2016 a Columbia County jury found McKinney guilty on all counts and was sentenced to serve eighteen years (18) < six years (6), eighteen years(18), sixty years(60), thirty years(30), twelve years(12), and ten year(10) imprisoned to be run consecutively, for a total of 154 years. McKinney appealed to the Arkansas Court of Appeals and was denied October 17, 2019 in CR-18-546, the date the mandate also issued. This petition is timely filed, within sixty (60) days after that date, pursuant to Ark. R. Crim. P. 37.2.

Strickland's standard of Review: The burden of proof of an Ineffectiveness Claim-does it undermine confidence in the outcome?

In Strickland vs. Washington, 466 U.S. 668 (1984), the Supreme Court recognized that the right to effective assistance is essential to protect the fundamental right to a fair trial. To prevail on a claim of ineffective assistance, it must be shown that counsel's performance was deficient and that the deficient performance prejudiced the defense. The standard is "reasonable professional assistance", meaning that counsel has a duty to bring "such skill and knowledge as will render the trial a reliable adversarial testing process." See also Wiggins vs. Smith, 539 U.S. 510 (2003). To succeed on an ineffective assistance claim, it must be shown that counsel's performance fell below an "objective standard of reasonableness" and that there is a "reasonable

probability that, but for counsel's unprofessional errors, the results of the proceedings would have been different." A "reasonable probability" is a probability sufficient to undermine confidence in the outcome. Vick vs. State, 301 Ark. 296, 782 S.W. 2d. 396 (1990).

The standard for evaluating claims of ineffective assistance of appellate counsel is similar, Bell vs. Lockhart, 795 F. 2d 655 (8th Cir. 1986). If appellate counsel negligently fails to raise issue, and there is a reasonable probability that the issue, if raised, would have resulted in a reversal, relief is warranted. See Jones vs. Barnes, 463 U.S. 745 (1984).

In this case, trial and appellate counsel were ineffective in several respects.

Ground One: McKinney was constructively denied his right to counsel. Trial court abuse of discretion ~~caused~~ ^{caused} to prejudice with a deficient performance and inadequate representation in violation of the 6th Amendment.

(A) Trial court abused its discretion in denial of Trial Counsel motion to be relived as counsel. In said motion, paragraph (2) stated the defendant was not cooperating with defense counsel in preparing his defense in this matter. How? Paragraph (3) stated the defendant is not in communication with defense counsel and is not complying with agreements he has entered. What agreements? Paragraph (4) Defendant instructed counsel to withdraw as his Attorney and paragraph (5) counsel states that he was not prepared for trial.

(B) Conflict between McKinney and Counsel was serious and gave rise to presumption that McKinney was prejudice by his inability to communicate with Counsel. Trial court did not fulfill its duty to inquire into the conflict. Before ruling on a Motion to Withdraw of Counsel do to an irreconcilable conflict, a court must conduct such necessary inquiry as might ease the defendant's dissatisfaction, distrust, and concerns and the inquiry must also provide a sufficient basis for reaching an informed decision. James vs. Brigano, 470 F. 3d. 636 (8th cir. 2006).

(C) Trial Counsel Josh Q Hurst utterly failed to develop and present a defense for trial. Counsel did not file substantive pre-trial motions. Counsel had several procedural motions denied as untimely. Counsel did not file for omnibus hearing to develop factual findings evidence. Counsel failed to investigate witnesses. Counsel did not subpoena witnesses. Counsel did not object to prosecution evidence. Counsel did not strike bias juror, defendant was prejudice by counsel at guilty phase and sentencing, etc. . .

Ground Two: Counsel was ineffective for failure to file motion to suppress wiretape and drug evidence.

- (A) (C) McKinney has a right to be free from unreasonable searches and seizure was violated by a unauthorized wire-tape interception made by police on November 10 and 24, 2015. Each application for an order authorizing or approving the interception of wire, oral, or electronic communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Arkansas Rules of Criminal Procedure 10.1. Relying upon Kate vs. United States 389 U.S. 347, 88, S. Ct. 507 14 L. Ed 2d. 536, without prior judicial authorization no part of the contents such communication and no evidence derived therefore may be received in any trial.
- (B) (C) There's no record in this case shows that Detective Chambers and Detective Ilmer had an order from a Judge authorizing or approving the interception of wire-tape. The unlawfully interception of wire-tape was an illegal search of the property of McKinney under the Fourth Amendment of the United States Constitution and therefore should be suppressed as well as any and all evidence gain as a result of search warrant. *See Wong Sun V, United States, 371 U.S. 471 (1963)*
Ground Three: Trial Counsel was ineffective for failure to file motion to sever offense. Trial Court erred in consolidating offenses for trial purposes.
- (A) (C) McKinney was charged with delivery of methamphetamine for November 10, and November 24, 2015. The only connection between the two sales was fact that both were made to one of the same confidential informer and such showing along was insufficient to connect two sales by a single scheme or plan within meaning of applicable rule Arkansas Rule of Criminal Procedure 22.2, Teas vs. State 1979, 266 Ark. 572, 587 S.W. 2d. 28. The purpose of Ark. R. Crim. P. 22.2 is to give effect to the principle that the state cannot bolster its case against the accused by proving that he has committed other similar offenses in the past. Alford vs. State, 223 Ark. 330, 266 S.W. 2d. 804.
- (A) (C) Delivery of control substance to confidential informant in exchange for money on November 10, 2015 and deliver of control substance 14 days later on November 24, 2015, did not involve a single scheme or plan citing Bunn vs. State 1995, 898 S.W. 2d. 450, 320 Ark 516. Joiner was not proper in this case because the offenses were committed at different times, were not part of the same transactions or plans and involves different witnesses and evidence. Turner vs. State 2011, 380 S.W. 3d. 400 2011 Ark. 111.

(C) Pursuant to Arkansas Rules of Criminal Procedure 23.1 (a) trial court erred in consolidating the offenses from November 2015 and offenses on January 28, 2016+ for purpose of trial. Clay vs. State, 1994, 886 S.W. 2d. 608, 318 Ark. 550.

Some witnesses were indorsed in only one of the offenses consolidated for trial and that permitting the testimony to be considered by the jurors as to all of the offenses was error. Witness endorsed to testify in one proceeding unless endorsed by the court to testify in all proceedings even if the charges are alike in nature. In fact, Rule of Evidence 404 (b) has nothing to do with the endorsement of witness, but rather concerns the admissibility of evidence of prior crimes or wrongs. U.S. vs. Moore 375 F. 3d. 259 264-65 (8th cir. 2009). It is plain error to admit prejudicial evidence of McKinney prior bad acts.

Ground Four: McKinney was prejudice by Appellate Counsel deficient performance in failing to raise prosecutor failed to comply with discovery motion pursuant to Arkansas Rules of Criminal Procedure 17.1 and abandon argument relating to Motion to Compel Testing of certain evidence.

(A) McKinney Trial Counsel filed a Motion for Discovery requesting expert scientific testings and results of any test. The existing of the submission sheet which had been submitted with the firearm was not revealed to McKinney. The Prosecutor for the state violated Arkansas Rule of Criminal Procedure 17.1, when they failed to disclose to defense counsel crime Laboratory results on firearm. McKinney trial counsel was entitles to requested material relating to Laboratory testing performed by the state expert and absent of diligent failure of state to provide material was unfairly prejudice to McKinney. Arkansas Rules of Criminal Procedure 17.3, Hunter vs. State, 316 Ark. 746, 875 S.W. 2d. 630. In cases where prejudice will result from the states failure to comply with pre-trial discovery rules, the trial court must take appropriate action to remove the prejudice by excluding the evidence, ordering discovery, granting a continuance or entering another order appropriate under the circumstances. Shuffield vs. State, 23 Ark. App. 167, 745 (1998).

In Brady vs. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194-97 10 L. Ed 2d. 215, 218 (1963) the state was required to turn over allegedly exculpatory DNA evidence in order to allow defendant to make colorable showing on innocent. State alleged withholding of laboratory testing results constitutes Brady Violation, given that allegedly withheld evidence would have excluded McKinney.

(B) Appellate Counsel Lott Rolfe IV proves to be ineffective for failure to raise appealable issue on appeal relating to fingerprint testing of firearm. Two months prior to trial, Counsel filed a Motion to compel testing of certain evidence regarding to the offense possession of firearm by certain person. The trial court denied McKinney motion for untimely. The offense contained material; circumstantial, substantial evidence within discovery to raise the issue of stated offense should have been dismissed due to lack of evidence.

Ground Five: Counsel was ineffective for failure to properly challenge the sufficiency of evidence on Motion for Directed Verdict.

(A) Counsel motion for directed verdict was too general to preserve for appeal. Counsel did not specifically advise the circuit court as to how the evidence was deficient. The evidence was insufficient to support McKinney convictions for possession of firearm by certain person, possession with intent to deliver methamphetamine, and simultaneous possession of drugs and firearm. To prove constructive possession of contraband, the state is required to establish beyond a reasonable doubt: (1) the defendant exercised cure, control and management over the contraband, and (2) the defendant knew the matter possessed was contraband. Williams vs. State, 54 Ark. App. 352, 927 S.W. 2d. 501 reversed 327 Ark. 213 939 S.W. 2d. 856.

The state did not meet its burden of proving every element of every criminal offense beyond a reasonable doubt. Detective Chambers testified under oath and presented the element of reasonable doubt by stating the gun and drugs could have belonged to the other subjects (Jaylon McKamie and S. Mullins) in the home at the time of search, but was not investigated and the firearm and drugs was not submitted to the lab for latent-printing testing. During the search, Agent Bradshaw found \$305.00 on Jaylon McKamie and messages in his phone indicating he had been trafficking drugs.

(B) To sustain a conviction of simultaneous possession of drugs and firearm, the firearm has to be readily accessible for use. A.C.A. 5-74-106(d). There's no evidence indicating the firearm that was recovered was readily accessible for use. McKinney had remained outside the home while officers conducted the search. 5-74-106(d) Vergara-Seto vs. State 202, 74 S.W. 3d. 653, 77 Ark. App. 280. This is insufficient to demonstrate a prima facie of constructive possession. Boston vs. State, 2000 S.W. 3d. 245, 69 Ark. App. 155. Based on this evidence, it is not beyond the realm of possibility that someone else planted the (firearm and drugs) and left [McKinney] to take the fall and face consequences.

Ground Six: Trial Counsel failed to request jury instruction of charged offense of Arkansas Code Annotated 5-64-411 "Proximity to certain facilities" which carries an enhancement of a mandatory ten years.

(M) Statue providing that a person is subject to enhanced sentencing of an additional term of imprisonment if the person delivering the control substance and the offense is committed on or within 1000 feet of a church required proof of a culpable mental state, a culpable mental state is nonetheless required and is established only is a person acts purposely, knowingly or recklessly (Emphasis Added). *Small v. state* 2018 Ark App 80, 543 S.W. 3d 516, A.C.A. 5-7-203 (1/2)

The state failed to address McKinney culpable mental state, a key element of the crime, and that there was no evidence that he was aware of the church's location. The state also did not present evidence that McKinney acted purposely or knowingly, it failed to meet its burden of proof.

Ground Seven: McKinney was prejudice by Trial Counsel and Appellate Counsel for failure to properly present and/or litigate a number of potentially meritorious arguments relating to Motion to Suppress Statement.

(A) (C) McKinney custodial statement was used to corroborate other state evidence. McKinney statement was insufficient to support his conviction for simultaneous possession of drugs and firearm, possession of firearm by certain person, possession with intent to deliver and maintaining a drug premises.

McKinney statement did not included admission on the above stated charges. The statement only revealed information about his methamphetamine trade, but he did not confess to any facts surrounding the charges he faces at trial, for instant he did not confess to the November 10 or 24, 2015 drug transaction or possessing any of the evidence obtained in the search of his home on January 29, 2016.

A conviction cannot be had in any case of felony upon the tending to connect the defendant with the commission of the offense. A.C.A. 16-89-111 (e)(A), Smith vs. State, 202 2012 Ark. App. 534, 423 S.W., 3d. 624. Evidence that merely raises suspicion of guilt is insufficient. A.C.A. 16-89-111 (e)(A). The statement was insufficient to support a finding of guilt and if the statement was eliminated other evidence would have not showed guilt. A.C.A. 16-89-111 (e)(1)(A), Pickett vs. State 301 Ark. 345. The state did not meet its burden of proof. The jury's guilty verdict resorts to speculation and conjecture.

(B) (C) The statement made by McKinney that was submitted to the jury was edited and altered. On remand for suppression hearing on motion to suppress statement, Prosecutor Ryan Phillips admitted the statement that was played at trial was not the full version. Prior to the suppression hearing on statement, Mr. Phillips produces a different statement from the statement that was played at trial asserting that it was McKinney full custodial statement.

The State edited, altered, and intentionally deleted exculpatory points within McKinney custodial recording statement. The withholding of exculpatory and mitigating evidence in favor of the accused violated Brady vs. Maryland also the Sixth and Fourteenth Amendment rights to a fair and impartial trial.

(C) (C) The basis of Arkansas Rule of Criminal Procedure 4.7 (b)(1) + (3) are meritorious in regards to the Motion to Suppress statement of the following guidelines: Ark. R. Crim. P. 4.7 (b)(1). In determining the admissibility of any custodial statement, the court may consider together with all other relevant evidence and consisted with existing law, whether an electronic recording is substantially accurate and not intentionally altered. Ark. R. Crim. P.4.7 (b)(3), "Nothing in this rule preclude the admission of a statement that is used only for impeachment and not as substantive evidence."

No custodial interrogational statement shall in any way be edited, altered from its original format. Nothing prevents this recorded statement to be played in open court, to be used only for impeachment, but never for substantial evidence.

(C) (C) McKinney made a statement to Special Agent Louis Ilmer and Agent Chambers at the Columbia County Sheriff's office. McKinney submits that he did not legally waive his rights to remain silent. The burden is on the state to prove by a preponderance of evidence that a custodial statement was given voluntarily and was knowingly and intelligently made.

On remand for suppression hearing on Motion to suppress statement, Agent Ilmer did not show and testify as a witness to McKinney in-custody statement. The State evidence shows that Agent Ilmer was present when McKinney made the statement, and his name was signed as a witness at the end of the statement. The State did not meet its burden of proof by failure to call Agent Ilmer that was present at the time of the interrogation or giving an adequate explanation for his absence. Smith vs. State 256 Ark. 67 S.W. 2d. 504, A.C.A. 16-89-107(b).

Ground Eight: On remand for motion to suppress search hearing, counsel unreasonably failed to raise and litigate the Frank vs. Delaware issue that existed with respect to the affidavit for the search warrant.

(A) On remand, a suppression hearing was held, but a full and fair hearing was not held, all due to the counsel's ineffectiveness. McKinney defense counsel was ineffective in inadequately pursuing a suppression motion based upon Franks vs. Delaware, 438 U.S. 154 (1978). While counsel motion was arguably sufficiently specific to raise grounds for suppression based upon Franks vs. Delaware, 438 U.S. 154 (1978) at the suppression hearing counsel presented no testimony or other evidence to support the motion to suppress search under Franks, if an officer submits false information or omits critical information from a search warrant application and obtain a warrant, the resultant search may be unreasonable under the Fourth Amendment. United States vs. Stropes, 387 F. 3d. 766, 77 (8th Cir. 2004).

(B) McKinney submits that the affidavit for the search warrant contained false statements that were necessary to finding of probable cause for search. The statement made in the affidavit for the warrant is obviously false with the respect to the amount of controlled substance that was allegedly purchased from McKinney. In the affidavit, Agent Chambers stated under oath the drug transaction supposedly engaged on November 10, 2015 involved the purchase of 1.8 grams of methamphetamine. However; crime lab results showed 1.3 grams and Drug Chemist Jennifer Shirley testified at trial that it was 1.3 grams. That leaves apparently a half of gram (0.5 grams) missing. The affiant's statement in the affidavit for the warrant regarding the amount of controlled substance involving in this alleged transaction is false. Chambers stated under oath in the affidavit for the warrant that the drug transaction supposedly engaged in November 24, 2015 involved the purchase of 6.1 grams of methamphetamine. However; crime lab results showed 4.6 grams and Drug Chemist Jennifer Shirley testified to the results at trial. Once again, where is the missing methamphetamine? The statement in the affidavit for warrant again is false. Aside the Frank issue presented here, this raises serious questions about the evidence in this case (methamphetamine) and how, when, where and why some of it came up missing.

Ground Nine: Counsel was ineffective for failure to object to trial court abuse of discretion in sentencing McKinney to consecutive sentences.

A A defendant in criminal proceedings has a right under the Sixth Amendment to effective assistance from his attorney at all critical stages in the proceedings which include sentencing.

Defense counsel's decision to stand silent at sentencing warrants presumption of prejudice. At the close of the case, the trial court chose to give McKinney consecutive sentences for each conviction for 154 years. McKinney does not feel that a case like this warrants imposition of a 154 year sentence and that there was an abuse of discretion by the trial court in imposing such a sentence.

(b)(7)(C) The trial court did not give a clear reason as to why it chose to sentence McKinney to consecutively for his conviction. A factor that should have been given considerable weight, in determining sentence, is that McKinney gave a recorded statement after his arrest detailing his involvement in illegal drug activity. McKinney also appears to have been told that he would be treated favorably by choosing to cooperate with Law enforcement officers.

Ground Ten: McKinney was denied rights to impartial Judge. Counsel was ineffective for failing to file motion for Judge to ^{recuse} reverse.

(A)(5) In 2006, David W. Talley Jr., Arkansas Bar No. 82155, was reprimanded and fined (CPC docket no. 2006-044) for violating several rules of Arkansas Rules of Professional Conduct offenses involving "moral turpitude" offenses involving dishonesty, breach of trust, or serious interference with the administration of justice can indicate indifference to legal obligation. Mr. Talley misconducts reflects adversely on his honesty, impartiality, temperament of fitness to serve as a Judge, in that it constituted failure to maintain personal integrity and brought bench and bar into disrepute. Rule of Disciplinary Enforcement 11 (D)(4).

Ground Eleven: McKinney was prejudice by substitution of counsel pursuant to Arkansas Rules of Professional Conduct 1.9 (Duties to former Clients).

(A)(5) Attorney Michael Yarbrough filed a motion to withdraw from McKinney case because he had landed a job with the Attorney General Office which is directly adverse to Mr. McKinney. Mr. Yarbrough requested to be substituted with Attorney Jason Davis who is associated in the same firm. Mr. Yarbrough motion to substitute counsel of record was granted and Attorney Jason Davis was appointed as counsel for McKinney.

The Arkansas Court of Appeals erred when they substituted counsel in the same Law Firm pursuant to Arkansas Rules of Professional Conduct 1.9 (a)(b)(1)(2)(c)(1)(2) such prior representation has a duty to obtain McKinney consent before appointing a Attorney in the same Law Firm.

Ground Twelve: Counsel failed to file motion for Judge to recuse from all proceedings on grounds of conflict of interest.

(A) Judge Talley previously represented McKinney in multiple criminal cases occurring over the course of seven years. With Judge Talley having a long-standing attorney-client relationship with McKinney, it is nearly unquestionable that Judge Talley became intimately familiar with certain aspects of McKinney's lifestyle, his habits, his trial strategies, his character, his propensity for truthfulness, etc. It is for this very reason the attorney-client privilege extends even beyond death of the client.

(B) A conflict of interest falls under Arkansas Code of Judicial Conduct 2.11 (A) a Judge shall disqualify himself or herself in any proceedings in which the judge's impartiality might reasonably be questioned including but not limited to the following circumstances 2.11 (A) 1-6 Arkansas Code of Judicial Conduct 2.11 (C) states Judge is subject to disqualify under this rule, other than for bias or prejudice under paragraph (A)(1).

(C) The definition for recuse in the Black Law Dictionary (1) To remove (oneself) as Judge in a particular cast because of prejudice or a conflict of interest. (2) To challenge or object to (a judge) as being disqualified from hearing a case because.

- A. That this Court declare Petitioner's sentence and conviction void.
- B. That this Court grant an evidentiary hearing, appoint counsel for your petitioner, and order the presence of your petitioner.
- C. That this Court grant your petitioner a new trial and any and all relief the Court deems just and proper.

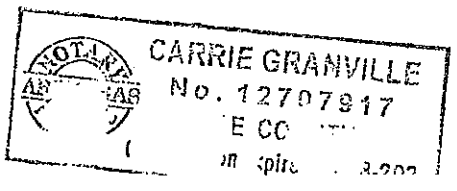
I, Kwasi A. McKinney, the petitioner herein, and in support of my Rule 37 Petition, after first being duly sworn, do hereby swear that the statements, matters, and things contained in my Rule 37 Petition are a true and accurate account to the best of my knowledge, information, and belief and for the purposes herein stated, set forth, and contained.

Kwasi McKinney
Petitioner, pro se
ADC # [REDACTED]

State of Arkansas Lee County
Subscribed and sworn to before me, a Notary Public, on this 06 day of Dec
20 19.

My Commission expires: 10-18-2028

Carrie Granville
Notary Public



10 Ex# 2j

Arkansas
State Claims Commission

APR 04 2022

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2020 JUL 22 PM 3:42

COLUMBIA COUNTY, AR
ANGELA KETH
CIRCUIT CLERK

IN THE CIRCUIT COURT OF COLUMBIA COUNTY, ARKANSAS
CRIMINAL DIVISION

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. 14CR-16-35-5

KWASI MCKINNEY

DEFENDANT

ORDER DISMISSING PETITION FOR RELIEF UNDER RULE 37.1
OF THE ARKANSAS RULES OF CRIMINAL PROCEDURE

Comes on for consideration the Defendant's "Petition for Relief Under Ark. R. Crim. P. 37.1" (filed December 12, 2019). After reviewing the pleadings and the Circuit Clerk's file, the Court FINDS:

1. On November 29, 2016, the Defendant had a jury trial and was convicted of Delivery of Methamphetamine, Possession of Methamphetamine, Possession of Drug Paraphernalia, Maintaining a Drug Premises, Simultaneous Possession of Drugs and Firearms, Possession of Methamphetamine with Purpose to Deliver, Possession of a Firearm by a Felon, and found to be a habitual offender. Pursuant to the jury's sentencing verdicts, the Defendant was sentenced to a term of one hundred fifty-four (154) years in the Arkansas Department of Correction.

2. The Defendant appealed his convictions. The convictions were affirmed in part and reversed and remanded in part, and the mandate was issued on January 30, 2018 and filed on February 5, 2018.

3. The reversal and remand was with a holding that the circuit court abused its discretion in denying the Defendant's request for a hearing on his motion to suppress. The remand directed the circuit court to hold a hearing on the motion to suppress and to rule on the motion. The appellate decision provided if the circuit court determined the motions lacked merit, the convictions would be affirmed. On April 16, 2018, the circuit court held a hearing on the Defendant's motion to suppress search and motion to suppress statement. On April 25, 2018, orders were entered denying both motions. The Defendant appealed the ruling on the issues raised on remand. The rulings were affirmed, and the mandate was issued on August 28, 2019 and filed on October 24, 2019.

4. On December 12, 2019, the Defendant filed a pro se Petition for Relief under Arkansas Rules of Criminal Procedure Rule 37.1.

5. Rule 37.2(c)(ii) of the Arkansas Rules of Criminal Procedure provides:

If an appeal was taken of the judgment of conviction, a petition claiming relief under this rule must be filed in the circuit court within sixty (60) days of the date the mandate is issued by the appellate court. If a petition is filed after a conviction is affirmed by the appellate court but before the mandate is issued, the petition shall be treated as filed on the day after the mandate is issued.

6. The Petition does not comply with Rule 37.2(c)(ii) of the Arkansas Rules of Criminal Procedure. The mandate was issued on January 30, 2018. The Petition was filed on December 12, 2019, six hundred eighty-one (681) days after the mandate was issued.

7. If it should be considered that the Defendant's filing time should be extended due to the remand, the Petition does not comply Rule 37.2(c)(ii) of the Arkansas Rules of Criminal Procedure. The remand order provided if the circuit court determined the motions to suppress lacked merit, the convictions would be affirmed. The circuit court denied the motions to suppress in an Order filed on April 25, 2018. The Petition was filed on December 12, 2019, five hundred ninety-six (56) days after the convictions were deemed affirmed.

8. If it should be considered that the Defendant's filing time should be extended due to his appeal of the order entered following the remand, the Petition does not comply Rule 37.2(c)(ii) of the Arkansas Rules of Criminal Procedure. The mandate affirming the circuit court denial of the motions to suppress was issued on August 28, 2019. The Petition was filed on December 12, 2019; one hundred six (106) days after the mandate was issued.

9. Rule 37.1(b) of the Arkansas Rules of Criminal Procedure provides:

The petition shall state in concise, nonrepetitive, factually specific language, the grounds upon which it is based. The petition, whether handwritten or typed, shall be clearly legible, and shall not exceed ten pages of thirty lines per page and fifteen words per line, with left and right margins of at least one and one-half inches and upper and lower margins of at least two inches. The circuit court or appellate court may dismiss any petition that fails to comply with this subsection.

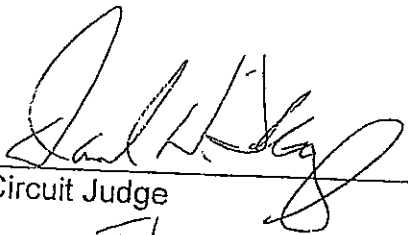
10. The Petition does not comply with Rule 37.1(b) of the Arkansas Rules of Criminal Procedure. Five (5) of the pages contain thirty-one (31) lines. All of the left and right margins are one and one-eighth (1-1/8) inch or less. All of the top margins are one and one-fourth (1-1/4) inch or less. All of the bottom margins are less than two (2) inches; two (2) of the pages having bottom margins of one and three-fourths (1-3/4)

Ex # 36

inches, one (1) of the pages having bottom margins of one and one-half (1-1/2) inches, six (6) of the pages having bottom margins of one and one-fourth (1-1/4) inches or less. For this reason, the Petition should be dismissed.

11. Based upon the foregoing, the Defendant's "Petition for Relief Under Ark. R. Crim. P. 37.1" (filed December 12, 2019) is dismissed.

IT IS SO ORDERED.



Circuit Judge
Date: July 22, 2020

FORMAL ORDER

STATE OF ARKANSAS,)
) SCT.
SUPREME COURT)

BE IT REMEMBERED, THAT A SESSION OF THE SUPREME COURT BEGUN AND HELD IN THE CITY OF LITTLE ROCK, ON MARCH 12, 2020, AMONGST OTHERS WERE THE FOLLOWING PROCEEDINGS, TO-WIT:

SUPREME COURT CASE NO. CR-18-546

KWASI MCKINNEY

PETITIONER

V. APPEAL FROM COLUMBIA COUNTY CIRCUIT COURT - 14CR-16-35

STATE OF ARKANSAS

RESPONDENT

PETITIONER'S PRO SE PETITION TO REINVEST JURISDICTION IN THE TRIAL COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS. PETITION DENIED. HART, J. DISSENTS. SEE OPINION THIS DATE.

IN TESTIMONY, THAT THE ABOVE IS A TRUE COPY OF THE ORDER OF SAID SUPREME COURT, RENDERED IN THE CASE HEREIN STATED. I, STACEY PECTOL, CLERK OF SAID SUPREME COURT, HEREUNTO SET MY HAND AND AFFIX THE SEAL OF SAID SUPREME COURT, AT MY OFFICE IN THE CITY OF LITTLE ROCK, THIS 12TH DAY OF MARCH, 2020.



CLERK

BY: _____

DEPUTY CLERK

ORIGINAL TO CLERK (W/COPY OF OPINION)

CC: KWASI MCKINNEY (W/COPY OF OPINION)

ADAM JACKSON, ASSISTANT ATTORNEY GENERAL

HON. DAVID W. TALLEY, JR., CIRCUIT JUDGE (W/COPY OF OPINION)

FORMAL ORDER

STATE OF ARKANSAS,)
)
) SCT.
)
 SUPREME COURT)

BE IT REMEMBERED, THAT A SESSION OF THE SUPREME COURT BEGUN AND HELD IN THE CITY OF LITTLE ROCK, ON JUNE 4, 2020, AMONGST OTHERS WERE THE FOLLOWING PROCEEDINGS, TO-WIT:

SUPREME COURT CASE NO. CR-18-546

KWASI MCKINNEY

PETITIONER

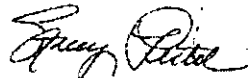
V. APPEAL FROM COLUMBIA COUNTY CIRCUIT COURT – 14CR-16-35

STATE OF ARKANSAS

RESPONDENT

PETITIONER'S PRO SE THIRD PETITION TO REINVEST JURISDICTION IN THE TRIAL COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS. PETITION DENIED. HART, J. DISSENTS. SEE **OPINION AND DISSENTING OPINION** THIS DATE.

IN TESTIMONY, THAT THE ABOVE IS A TRUE COPY OF THE ORDER OF SAID SUPREME COURT, RENDERED IN THE CASE HEREIN STATED, I, STACEY PECTOL, CLERK OF SAID SUPREME COURT, HEREUNTO SET MY HAND AND AFFIX THE SEAL OF SAID SUPREME COURT, AT MY OFFICE IN THE CITY OF LITTLE ROCK, THIS 4TH DAY OF JUNE, 2020.



CLERK

BY: _____

DEPUTY CLERK

ORIGINAL TO CLERK (W/COPY OF OPINIONS)

CC: KWASI MCKINNEY (W/COPY OF OPINIONS)

ADAM JACKSON, ASSISTANT ATTORNEY GENERAL

HON. DAVID W. TALLEY, JR., CIRCUIT JUDGE (W/COPY OF OPINIONS)

Ex# 5

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Stephanie Brown
2020 JUL 22 PM 3:41

COLUMBIA COUNTY, AR
ANGELA KEITH
CIRCUIT CLERK

**IN THE CIRCUIT COURT OF COLUMBIA COUNTY, ARKANSAS
CRIMINAL DIVISION**

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. 14CR-16-35-5

KWASI MCKINNEY

DEFENDANT

ORDER DENYING MOTION FOR ISSUANCE OF WRIT OF HABEAS CORPUS

Comes on for consideration the Defendant's "Motion for Issuance of Writ of Habeas Corpus Pursuant to A.C.A. 16-112-201 et.seq." (filed February 14, 2020). After reviewing the pleadings and the Circuit Clerk's file, the Court FINDS:

1. On November 29, 2016, the Defendant had a jury trial and was convicted of Delivery of Methamphetamine, Possession of Methamphetamine, Possession of Drug Paraphernalia, Maintaining a Drug Premises, Simultaneous Possession of Drugs and Firearms, Possession of Methamphetamine with Purpose to Deliver, Possession of a Firearm by a Felon, and found to be a habitual offender. Pursuant to the jury's sentencing verdicts, the Defendant was sentenced to a term of one hundred fifty-four (154) years in the Arkansas Department of Correction.

2. The Defendant appealed his convictions. The convictions were affirmed in part and reversed and remanded in part, and the mandate was filed on February 5,

2018. The Defendant appealed the ruling on the issues raised on remand. The rulings were affirmed, and the mandate was filed on October 24, 2019.

3. On December 12, 2019, the Defendant filed a pro se Petition for Relief under Arkansas Rules of Criminal Procedure Rule 37.1.

4. On February 14, 2020, the Defendant filed a pro se Motion for Issuance of Writ of Habeas Corpus Pursuant to A.C.A. 16-112-201, et. seq.

5. The Defendant asserts "that scientific evidence not available at trial clearly establishes petitioners [sic] actual innocence". In support of the contention, he references "an affidavit of witnesses who state the 'green crown royal bag' of drugs, baggies and scales were not petitioners. (see exhibit "A" attached hereto)." The Defendant "requests scientific testing, finger print camarison [sic] and analysis on the evidence, i.e. semi-automatic handgun, plastic baggies, scales and even the 'green crown royal bag' be conducted by the Arkansas Crime Lab". The Brief in support of the motion focuses on the alleged failure of law enforcement to investigate other individuals and failure of trial counsel to investigate.

6. The Court notes that there is no exhibit "A" filed with either the Motion or the Brief.

7. A petition under A.C.A. Sec. 16-112-201 is strictly limited to claims related to scientific testing of evidence. Therefore, the Defendant's assertions of the failure of law enforcement to investigate other individuals and failure of trial counsel to investigate are not properly raised under this statute.

8. A petition under A.C.A. Sec. 16-112-201 must meet the ten (10) requirements of A.C.A. Sec. 16-112-202.

9. The Defendant's Petition fails to meet the requirement of A.C.A. Sec. 16-112-202(6):

The person making a motion under this section identifies a theory of defense that:

(A) Is not inconsistent with an affirmative defense presented at the trial of the offense being challenged under 16-112-201; and

(B) Would establish the actual innocence of the person in relation to the offense being challenged under 16-112-201.

The testing requested by the Defendant would not establish actual innocence. Neither the lack of the Defendant's fingerprints nor the presence of any other person's fingerprints would establish innocence on these charges.

10. The Defendant's Petition fails to meet the requirement of A.C.A. Sec. 16-112-202(7):

The identity of the perpetrator was at issue during the investigation or prosecution of the offense being challenged under 16-112-201.

The identity of the Defendant was never an issue.

11. The Defendant's Petition fails to meet the requirement of A.C.A. Sec. 16-112-202(8):

The proposed testing of the specific evidence may produce new material evidence that would:

(A) Support the theory of defense described in subdivision (6) of this section; and

(B) Raise a reasonable probability that the person making a motion under this section did not commit the offense.

The testing requested by the Defendant would not produce new material evidence that would raise a reasonable probability that the Defendant did not commit the offenses. Neither the lack of the Defendant's fingerprints nor the presence of any other person's fingerprints reasonable probability that the Defendant did not commit the offenses.

12. The Defendant's Petition fails to meet the requirement of A.C.A. Sec. 16-112-202(10):

- The motion is made in a timely fashion subject to the following conditions:
- (B) There shall be a rebuttable presumption against timeliness for any motion not made within thirty-six (36) months of the date of conviction. The presumption may be rebutted upon a showing:
 - (i) That the person making a motion under this section was or is incompetent and the incompetence substantially contributed to the delay in the motion for a test;
 - (ii) That the evidence to be tested is newly discovered evidence;
 - (iii) That the motion is not based solely upon the person's own assertion of innocence and a denial of the motion would result in a manifest injustice;
 - (iv) That a new method of technology that is substantially more probative than prior testing is available; or
 - (v) Of good cause.

The date of conviction was November 29, 2016 and the Defendant's Motion was filed on February 14, 2020; this was over thirty-eight (38) months after the date of conviction.

The Defendant's Motion contains no claim that the presumption of untimeliness should be rebutted. In reviewing the history of this case, it is clear to the Court that there is no valid rebuttal:

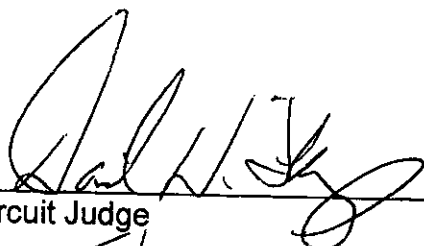
- (i) There can be no valid assertion of the Defendant's incompetence.
- (ii) The evidence requested to be tested is not newly discovered evidence.
- (iii) The motion is based solely upon his own assertion of innocence. Denial of the motion would not result in a manifest injustice.
- (iv) There is no assertion of a new method of technology.
- (v) There is no good cause.

13. In considering all of the assertions of the Defendant concerning testing of the requested items in the light most favorable to the Defendant, when viewed in the light of

the evidence as a whole, it would not be sufficient to establish by clear and convincing evidence that no reasonable fact-finder would find the Defendant guilty of the underlying offenses.

14. Based upon the foregoing, the Defendant's "Motion for Issuance of Writ of Habeas Corpus Pursuant to A.C.A. 16-112-201 et.seq." (filed February 14, 2020) is denied.

IT IS SO ORDERED.



Circuit Judge
Date: July 22, 2020

STATE OF ARKANSAS)
) §
COUNTY OF Columbia)

AFFIDAVIT

I, Shardea Mullins, after first being duly sworn, do hereby swear, depose and state that: I was present during the drug raid and search of Kwasi McKinney home [redacted]. The green crown royal bag that had the Meth and scale that was found was mine. [redacted]
~~I was never called to come to court by no lawyer to testify. I will testify and admit it to the Sheriff of Columbia County to submit my statement of fact to the Court on the charges that was brought on Kwasi McKinney that the drugs were not his.~~

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

10-24-19
DATE

Shardea Mullins
AFFIANT
[redacted]
SC

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, on this 24 day of October, 2019.
Hope Ann Young
NOTARY PUBLIC

My Commission Expires: March 16, 2022

HOPE ANN YOUNG
Notary Public-Arkansas
Columbia County
My Commission Expires 03-16-2022
Commission # 12698252

Ex # 17

Stephanie Brown
2019 DEC 18 PM 3:11

COLUMBIA COUNTY, AR
CLERK OF COURT
COURT HOUSE
COLUMBIA, AR

**IN THE CIRCUIT COURT OF COLUMBIA COUNTY, ARKANSAS
CRIMINAL DIVISION**

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. 14CR-16-35

KWASI ANDRADE McKINNEY

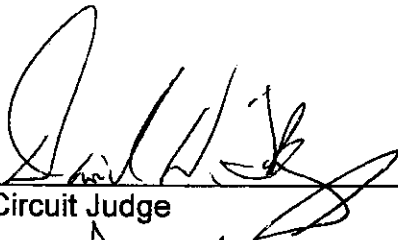
DEFENDANT

ORDER

On this the 16th day of December, 2019, comes on for consideration the Petition for Reduction of Sentence (filed on November 4, 2019). The Court has reviewed the pleadings and the file of the Columbia County, Arkansas Circuit Clerk.

The Petition is denied.

IT IS SO ORDERED.



Circuit Judge
Date: December 17, 2019

APR 04 2022

RECEIVED

FILED
Stephanie Brown
2020 JAN 29 AM 11:59

COLUMBIA COUNTY, AR
ANGELA KEITH
Clerk

IN THE CIRCUIT COURT OF COLUMBIA COUNTY, ARKANSAS

CRIMINAL DIVISION

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. 14CR-2016-35

KWASI MCKINNEY

DEFENDANT

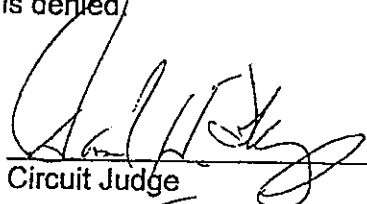
ORDER

Comes on for consideration the Defendant's Motion to Recuse (filed January 13, 2020). After reviewing the pleadings and the Circuit Clerk's file, the Court FINDS:

1. On January 13, 2020, the Defendant filed a Motion to Recuse.
2. The Motion has no merit.

WHEREFORE, the Defendant's Motion is denied.

IT IS SO ORDERED.



Circuit Judge

Date: January 29, 2020



Judicial Discipline & Disability Commission

JUDGE KIRK JOHNSON
CHAIRMAN

323 Center Street • Suite 1060
Little Rock, AR 72201
(501) 682-1050 • Fax: (501) 682-1049
E-Mail: jddc@arkansas.gov

DAVID J. SACHAR
EXECUTIVE DIRECTOR

June 9, 2020

Honorable David Talley
5th Division Circuit Court
P.O. Box 785
Magnolia, AR 71753

RE: Case: #20155

Dear Judge Talley:

A Judicial Discipline and Disability Commission investigative panel reviewed a complaint filed against you by Kwasi McKinney. An investigation was conducted to determine if the complainant's allegations might constitute any basis for action by this Commission.

The investigation initiated by this complaint did not reveal or find sufficient facts to support a claim of judicial misconduct, wrong-doing, or incapacity within the Commission's jurisdiction. As a result of this finding, there is insufficient cause to proceed and this complaint is dismissed. This dismissal notice is the Commission's final notice in this complaint and is public information.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Sachar".

David J. Sachar
Executive Director

cc: Kwasi McKinney

EX#10

FILED
Stephanie Brown
2020 JUL 22 PM 3:43

COLUMBIA COUNTY, AR
ANGELA KEITH
CIRCUIT CLERK

IN THE CIRCUIT COURT OF COLUMBIA COUNTY, ARKANSAS
CRIMINAL DIVISION

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. 14CR-16-35-5

KWASI MCKINNEY

DEFENDANT

ORDER DENYING MOTION TO AMEND RULE 37 PETITION

Comes on for consideration the Defendant's "Motion to Amend Rule 37 Petition" (filed January 21, 2020). After reviewing the pleadings and the Circuit Clerk's file, the Court FINDS:

1. On November 29, 2016, the Defendant had a jury trial and was convicted of Delivery of Methamphetamine, Possession of Methamphetamine, Possession of Drug Paraphernalia, Maintaining a Drug Premises, Simultaneous Possession of Drugs and Firearms, Possession of Methamphetamine with Purpose to Deliver, Possession of a Firearm by a Felon, and found to be a habitual offender. Pursuant to the jury's sentencing verdicts, the Defendant was sentenced to a term of one hundred fifty-four (154) years in the Arkansas Department of Correction.

2. The Defendant appealed his convictions. The convictions were affirmed in part and reversed and remanded in part, and the mandate was filed on February 5,

2018. The Defendant appealed the ruling on the issues raised on remand. The rulings were affirmed, and the mandate was filed on October 24, 2019.

3. On December 12, 2019, the Defendant filed a pro se Petition for Relief under Arkansas Rules of Criminal Procedure Rule 37.1.

4. On January 21, 2020, the Defendant filed a pro se Motion to Amend Rule 37 Petition.

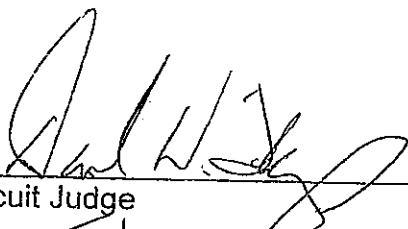
5. Rule 37.2(e) of the Arkansas Rules of Criminal Procedure provides: "Before the court acts upon a petition filed under this rule, the petition may be amended with leave of the court."

6. The original Petition for Relief under Arkansas Rules of Criminal Procedure Rule 37.1 was untimely pursuant to Rule 37.2(c)(ii). There can be no amendment that can cure the untimeliness of the original Petition.

7. The original Petition for Relief under Arkansas Rules of Criminal Procedure Rule 37.1 failed to comply with Rule 37.1(b).

8. For the reasons set out above, the "Motion to Amend Rule 37 Petition" (filed January 21, 2020) is hereby denied.

IT IS SO ORDERED.



Circuit Judge
Date: July 22, 2020

FILED
Stephanie Brown
2020 JUL 22 PM 3:42

COLUMBIA COUNTY, AR
ANGELA KEITH
CIRCUIT CLERK

IN THE CIRCUIT COURT OF COLUMBIA COUNTY, ARKANSAS
CRIMINAL DIVISION

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. 14CR-16-35-5

KWASI MCKINNEY

DEFENDANT

ORDER DENYING MOTION TO FILE SUPPLEMENTAL RULE 37 PETITION

Comes on for consideration the Defendant's "Motion to File Supplemental Rule 37 Petition" (filed November 21, 2019). After reviewing the pleadings and the Circuit Clerk's file, the Court FINDS:

1. On November 29, 2016, the Defendant had a jury trial and was convicted of Delivery of Methamphetamine, Possession of Methamphetamine, Possession of Drug Paraphernalia, Maintaining a Drug Premises, Simultaneous Possession of Drugs and Firearms, Possession of Methamphetamine with Purpose to Deliver, Possession of a Firearm by a Felon, and found to be a habitual offender. Pursuant to the jury's sentencing verdicts, the Defendant was sentenced to a term of one hundred fifty-four (154) years in the Arkansas Department of Correction.

2. The Defendant appealed his convictions. The convictions were affirmed in part and reversed and remanded in part, and the mandate was filed on February 5,

2018. The Defendant appealed the ruling on the issues raised on remand. The rulings were affirmed, and the mandate was filed on October 24, 2019.

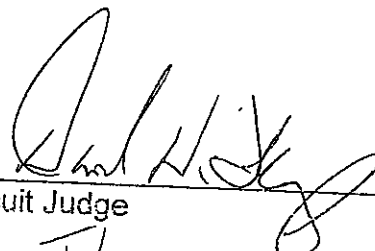
3. On December 12, 2019, the Defendant filed a pro se Petition for Relief under Arkansas Rules of Criminal Procedure Rule 37.1.

4. The Motion to File Supplemental Rule 37 Petition was filed prior to the filing of the Petition for Relief under Rule 37.1. Therefore, it is premature and should be dismissed.

5. If, on review, the Motion to File Supplemental Rule 37 Petition is considered a motion for filing an enlarged petition, it fails to set forth any legitimate ground or justification for filing an enlarged petition. The basis of the Motion is that he needs additional pages to include complaints against three (3) attorneys he had prior to his trial counsel. Therefore, the Motion to enlarge should be denied.

6. For the reasons set out above, the "Motion to File Supplemental Rule 37 Petition" (filed November 21, 2019) is hereby dismissed and denied.

IT IS SO ORDERED.



Circuit Judge

Date: July 22, 2020

FORMAL ORDER

STATE OF ARKANSAS,)
) SCT.
COURT OF APPEALS)

BE IT REMEMBERED, THAT A SESSION OF THE COURT OF APPEALS
BEGUN AND HELD IN THE CITY OF LITTLE ROCK, ON JANUARY 12, 2022,
AMONGST OTHERS WERE THE FOLLOWING PROCEEDINGS, TO-WIT:

COURT OF APPEALS CASE NO. CR-20-658

KWASI ANDRADE MCKINNEY APPELLANT

V. APPEAL FROM COLUMBIA COUNTY CIRCUIT COURT - 14CR-16-35

STATE OF ARKANSAS APPELLEE

APPELLANT'S PRO SE MOTION TO RECALL THE MANDATE IS DENIED.
VIRDEN, J., NOT PARTICIPATING.

IN TESTIMONY, THAT THE ABOVE IS A TRUE COPY OF
THE ORDER OF SAID COURT OF APPEALS, RENDERED
IN THE CASE HEREIN STATED, I, STACEY PECTOL,
CLERK OF SAID COURT OF APPEALS, HEREUNTO
SET MY HAND AND AFFIX THE SEAL OF SAID
COURT OF APPEALS, AT MY OFFICE IN THE CITY
OF LITTLE ROCK, THIS 12TH DAY OF JANUARY,
2022.



CLERK

ORIGINAL TO CLERK

CC: KWASI ANDRADE MCKINNEY
DAVID L. EANES, JR., ASSISTANT ATTORNEY GENERAL
HONORABLE DAVID W. TALLEY, JUDGE

Ex#13

UNIT LEVEL GRIEVANCE FORM (Attachment I)

Unit/Center MAX

Name Kwasi McKinney

ADC# Brks # Job Assignment

FOR OFFICE USE ONLY	
GRV. #	_____
Date Received:	_____
GRV. Code #:	_____

3-20-22 (Date) STEP ONE: Informal Resolution

3-28-22 (Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)
If the issue was not resolved during Step One, state why: NO RESPONSE

_____, (Date) EMERGENCY GRIEVANCE (An emergency situation is one in which you may be subject to a substantial risk of physical harm: emergency grievances are not for ordinary problems that are not of serious nature). If you marked yes, give this completed form to the designated problem-solving staff, who will sign the attached emergency receipt. In an Emergency, state why: Step one.

Is this Grievance concerning Medical or Mental Health Services? _____ If yes, circle one: *medical* or *mental*

BRIEFLY state your one complaint/concern and be specific as to the complaint, **date**, place, name of personnel involved and how you were affected. (Please Print): Mr. Richardson, I have a box of my legal work in the property office. I need to swap out some of the legal work that I have in my possession for a few documents that I need because I have a deadline on May 5, 2022 to file my papers. I need them ASAP because I need to get copies made.

[Signature]
Inmate Signature

3-20-22
Date

If you are harmed/threatened because of your use of the grievance process, report it immediately to the Warden or designee.

THIS SECTION TO BE FILLED OUT BY STAFF ONLY

This form was received on 3-23-20 (date), and determined to be **Step One** and/or an Emergency Grievance NO (Yes or No). This form was forwarded to medical or mental health? _____ (Yes or No). If yes, name of the person in that department receiving this form: _____ Date _____

[Signature] [Signature]
PRINT STAFF NAME (PROBLEM SOLVER) ID Number Staff Signature Date Received 3-23-22

Describe action taken to resolve complaint, including dates: _____

Staff Signature & Date Returned

Inmate Signature & Date Received

This form was received on 3-22-22 (date), pursuant to **Step Two**. Is it an Emergency? _____ (Yes or No).

Staff Who Received Step Two Grievance: [Signature] Date: 3-22-22

Action Taken: _____ (Forwarded to Grievance Officer/Warden/Other) Date: _____

If forwarded, provide name of person receiving this form: _____ Date: _____

DISTRIBUTION: YELLOW & PINK - Inmate Receipts; **BLUE** - Grievance Officer; **ORIGINAL** - Given back to Inmate after Completion of Step One and Step Two.

Ex # 14

UNIT LEVEL GRIEVANCE FORM (Attachment I)

FOR OFFICE USE ONLY	
GRV. #	_____
Date Received:	_____
GRV. Code #:	_____

Unit/Center _____

Name Kwasim McKinney

ADC# _____ Brks # _____ Job Assignment _____

3-20-22 (Date) STEP ONE: Informal Resolution

3-24-22 (Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)

If the issue was not resolved during Step One, state why: No response at step one.

_____, (Date) EMERGENCY GRIEVANCE (An emergency situation is one in which you may be subject to a substantial risk of physical harm: emergency grievances are not for ordinary problems that are not of serious nature). If you marked yes, give this completed form to the designated problem-solving staff, who will sign the attached emergency receipt. In an Emergency, state why: _____

Is this Grievance concerning Medical or Mental Health Services? _____ If yes, circle one: medical or mental

BRIEFLY state your one complaint/concern and be specific as to the complaint, date, place, name of personnel involved and how you were affected. (Please Print): Sgt. White I have a box of my legal work in the property office. I need to sweep out some of the legal work that I have in my possession for a few documents that I need because I have a deadline on May 5, 2022 to file my papers. Need them ASAP because I need to get copies made.

[Signature]
Inmate Signature

3-20-22
Date

If you are harmed/threatened because of your use of the grievance process, report it immediately to the Warden or designee.

THIS SECTION TO BE FILLED OUT BY STAFF ONLY

This form was received on 03-24-22 (date), and determined to be Step One and/or an Emergency Grievance (Yes or No). This form was forwarded to medical or mental health? _____ (Yes or No). If yes, name of the person in that department receiving this form: _____ Date _____

PRINT STAFF NAME (PROBLEM SOLVER) Bruce ID Number _____ Staff Signature Rucker Date Received 03-24-22

Describe action taken to resolve complaint, including dates: _____

Staff Signature & Date Returned _____

Inmate Signature & Date Received _____

This form was received on _____ (date), pursuant to **Step Two**. Is it an Emergency? _____ (Yes or No).

Staff Who Received Step Two Grievance: _____ Date: 3-24-22

Action Taken: _____ (Forwarded to Grievance Officer/Warden/Other) Date: _____

If forwarded, provide name of person receiving this form: _____ Date: _____

DISTRIBUTION: YELLOW & PINK - Inmate Receipts; BLUE - Grievance Officer; ORIGINAL - Given back to Inmate after Completion of Step One and Step Two.

Fx #15

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I, Jerri Gale Harrelson, Official Court Reporter for the Circuit/Chancery Court, 13th Judicial District of Arkansas, do hereby certify that I recorded the proceedings by Stenomask recording in the case of THE STATE OF ARKANSAS VERSUS KWASI ANDRADE MCKINNEY, Columbia County Circuit No. 2016-59-5, on April 16, 2018; before the Honorable David W. Talley, Jr., Circuit/Chancery Judge thereof, at Magnolia, Arkansas; that said recording has been reduced to a transcription by me, and the foregoing pages numbered one through 75 constitute a true and correct transcript along with all items received into evidence, of the proceedings held to the best of my ability.

Witness my hand this 3rd day of June, 2018.

Cost of Transcript: \$315.00



Jerri Gale Harrelson
JERRI GALE HARRELSON, CCR
Supreme Court Certified Reporter No. 533

MY COMMISSION EXPIRES:
April 6, 2026.

JERRI GALE HARRELSON
ARKANSAS SUPREME COURT #533
CERTIFIED COURT REPORTER

* * * * *

C E R T I F I C A T E

I, Jerri Gale Harrelson, Official Court Reporter for the Circuit/Chancery Court, 13th Judicial District of Arkansas, do hereby certify that I recorded the proceedings by Stenomask recording in the case of THE STATE OF ARKANSAS VERSUS KWASI ANDRADE MCKINNEY, Columbia County Circuit No. 2016-35-5, on November 29, 2016; before the Honorable David W. Talley, Jr., Circuit/Chancery Judge thereof, at Magnolia, Arkansas; that said recording has been reduced to a transcription by me, and the foregoing pages numbered one through 482 constitute a true and correct transcript along with all items received into evidence, of the proceedings held to the best of my ability.

Witness my hand this 6th day of February, 2017.

Cost of Transcript: \$2,033.20

Ex #17a

JERRI GALE HARRELSON, CCR
Supreme Court Certified Reporter No.533

MY COMMISSION EXPIRES:
April 26, 2026.

* * * * *

EX# 176

From: [Kathryn Irby](#)
To: [Thomas Burns \(DOC\)](#)
Cc: [Roni Gean \(DOC\)](#)
Subject: HEARING RESCHEDULED: McKinney v. ADC, Claim No. 200909
Date: Monday, May 23, 2022 1:17:00 PM
Attachments: [McKinney v. ADC -- 200909 -- hearing rescheduling ltr.pdf](#)

Thomas, please see attached.

Thanks,
Kathryn

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

May 23, 2022

Mr. Kwasi McKinney (ADC [REDACTED])
[REDACTED]
[REDACTED]

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602-9411

(via email)

RE: ***Kwasi McKinney v. Arkansas Division of Correction***
Claim No. 200909

Dear Mr. McKinney and Mr. Burns,

Due to a scheduling conflict, the Claims Commission has rescheduled this claim for hearing on Friday, July 15, 2022, beginning at 9:00 a.m. All parties will attend via Zoom. The Zoom invitation is enclosed, and the Claims Commission asks that Mr. Burns provide the Zoom invitation to Mr. McKinney's unit.

Each party's witness lists, exhibit lists, and exhibits are due by Friday, June 3, 2022. If the parties would like for the Claims Commission to review prehearing briefs, the briefs are due at the same time.

If Claimant would like to call other inmates or ADC employees as witnesses, Claimant will need to submit subpoena requests by June 3, 2022. The subpoena requests must include the witnesses' names and addresses. The Claims Commission notes that the subpoena requests previously submitted by Claimant do not include addresses or a certificate of service indicating that the filing was served upon ADC. Claimant may resubmit subpoena requests with the requested information added on or before June 3, 2022. If ADC objects to issuance of any subpoena, ADC will have until June 8, 2022, to file a detailed objection.

If Claimant would like to call a witness outside of ADC, Claimant will need to arrange for that witness's virtual attendance at the hearing. Claimant can direct the witness to contact the Claims Commission for the Zoom invitation. If a subpoena will be necessary to compel a witness's testimony, Claimant will need to submit a subpoena request by June 3, 2022. The subpoena request must include the witness's name and address. Once the Claims Commission issues the subpoena, Claimant will need to have the subpoena served upon the witness pursuant to Rule 45 of the Arkansas Rules of Civil Procedure.

If Respondent will require subpoenas in order to compel the testimony of any of its witnesses, those subpoena requests are also due on June 3, 2022.

Absent good cause shown, any subpoena requests received after June 3, 2022, will be denied.

To the extent that either party intends to file a motion of any kind, absent a showing of good cause, the motion must be submitted in sufficient time to allow the motion to be fully briefed by June 3, 2022.

Please note that a copy of any subpoena requests, witness lists, exhibit lists, and exhibits must be served upon the opposing party via U.S. Mail in accordance with the Arkansas Rules of Civil Procedure.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: kmirby

The Claims Commission is inviting you to a scheduled Zoom meeting.

Topic: Claims Commission -- hearings

Time: Jul 15, 2022 09:00 AM Central Time (US and Canada)

Join Zoom Meeting

<https://us06web.zoom.us/j/84188580665?pwd=MHdCUHhjS2RwSFFYnJhKdXBiSDlqdz09>

Meeting ID: 841 8858 0665

Passcode: hn8UgY

One tap mobile

+13126266799,,84188580665#,,,*476410# US (Chicago)

+19294362866,,84188580665#,,,*476410# US (New York)

Dial by your location

+1 312 626 6799 US (Chicago)

+1 929 436 2866 US (New York)

+1 301 715 8592 US (Washington DC)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

Meeting ID: 841 8858 0665

Passcode: 476410

Find your local number: <https://us06web.zoom.us/u/kbsCOcaVeE>

From: [Thomas Burns \(DOC\)](#)
To: [ASCC Pleadings](#)
Cc: [Roni Gean \(DOC\)](#)
Subject: Kwasi McKinney v ADC 200909
Date: Monday, May 23, 2022 1:09:03 PM
Attachments: [2067_001.pdf](#)

Witness and Exhibit List

Thomas Burns
General Counsel
Arkansas Department of Corrections
Division of Correction
6814 Princeton Pike
Pine Bluff Arkansas 71602
Phone: (870) 267-6845
Fax: (870) 267-6373
Cell: (870) 515-0918
thomas.burns@arkansas.gov

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI McKINNEY (ADC [REDACTED])

CLAIMANT

v

NO. 200909

ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTION

RESPONDENT

RESPONDENT WITNESS and EXHIBIT LIST

Comes Now the Respondent, Arkansas Department of Correction (ADC), for its Motion,
states:


Witness List

1. Claimant
2. Any Witnesses of the Claimant.
3. Angela Jenkins

Exhibit List

4. Relevant ADC policies
5. Claimants Response to Request for Admission dated on or about 11/19/2020
6. F-841 from 11/22/2019
7. Inmate Grievance [REDACTED] 19-02966

Respectfully submitted,

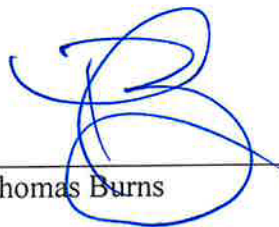


Thomas Burns (02006)
Division of Corrections
Legal Office
6814 Princeton Pike
Pine Bluff, AR 71602
(870) 267-6845 Telephone
(870) 267-6373 Facsimile
thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of the above pleading has been served this 23rd day of May 2022, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Kwasi McKinney ([REDACTED])
[REDACTED]



Thomas Burns

JUN 04 2022

Arkansas State Claims Commission

RECEIVED

Kwasi McKinney

Claimant

v.

Claim No. 200909

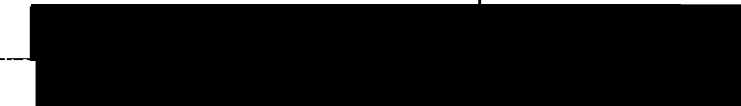
Arkansas Division of Correction

Respondent

Motion for Issuance of Subpoenas

Comes Now, Kwasi McKinney, claimant herein after, through this Motion for Issuance of Subpoenas, states as follow:

1. That the Commission has set a hearing for Claimant's claim for June 15, 2022 at 9:00 a.m. via Zoom at the



2. The claimant asserts that he tried to obtain the addresses of the witnesses that he ~~wants~~^{intends} to call through the ADC Records Department Supervisor Mrs. Dover but to no avail. (Ex 1-3)

3. The claimant asserts the below listed witnesses have fact evidence that is pertinent to this claim and the Commission should in seeking justice, order these witnesses to appear and give testimony under oath and on the record.

A. Sgt. Annette

ADC Employee

Camera and Phone Operator

Needs camera footage October 16, 2019 ~~12:00~~ 12:00 A.M - 3:00 P.M

B. C/O Mallard

ADC Employee

(D) shift (2019)

C. C/O Smith

ADC Employee

(D) shift (2019)

D. Sgt. Jenkins/White

ADC Employee

~~Max Sanitation~~ Property Officer

E. Sgt. Palmer

ADC Employee

Max Sanitation

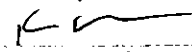
F. Travis Manning, Justin Hudman, Calvin Marshall, Cedrick

Lewis, Terrance Moore, Terin McMillian

ADC Inmates

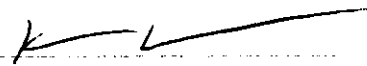
Wherefore, Kwasi McKinney request this Commission issue subpoena for the list of witnesses and serve on said witnesses and any other relief this Commission deems appropriate and just.

Respectfully Submitted


Kwasi McKinney

certificate of service

I, Kwasi McKinney do hereby certify that on this 27th day of May 2022 I have Served on Respondent through its attorney Thomas Burnas, at 6814 Princeton Pike, Pine Bluff AR 71602 by placing this Claimant's Motion for Issuance of Subpoenas in the U.S. Mail with sufficient postage affixed to ensure delivery.



Inmate Request Form

This form is to be used by inmates to contact staff with request on issues they may have. You should allow five working days to receive a response to your request. This is the East Arkansas Regional Unit in house form.

Name: Kwasi McKinney ADC Number [REDACTED] Barracks: [REDACTED] Date: 4-4-22

Staff Directed to: Ms. Dover Office: Records

My request is directed to the following area: (check one)

- | | | | |
|--|---|--------------------------------------|---|
| Chaplain <input type="checkbox"/> | Classification <input type="checkbox"/> | Commissary <input type="checkbox"/> | Assistant/ Deputy Warden <input type="checkbox"/> |
| Issuance <input type="checkbox"/> | Food Service <input type="checkbox"/> | Hobby Craft <input type="checkbox"/> | General Library <input type="checkbox"/> |
| Law Library <input type="checkbox"/> | Laundry <input type="checkbox"/> | Mail Room <input type="checkbox"/> | Medical <input type="checkbox"/> |
| Mental Health <input type="checkbox"/> | Parole <input type="checkbox"/> | Property <input type="checkbox"/> | Records <input checked="" type="checkbox"/> |
| Security <input type="checkbox"/> | Visitation <input type="checkbox"/> | Warden <input type="checkbox"/> | Other: <input type="checkbox"/> |

Give a detailed reason for your request: Could you please respond to the information inside the folder,
Thank you

Have you talked to any staff about your request? Yes No
If yes, to whom did you speak with and when?

[Signature] 4-4-22
Inmate Signature/ Date

Staff Responding: _____ Date: _____

Response: _____

RECEIVED
RECORDS DEPARTMENT

APR 04 2022

I am referring this to: [REDACTED]

Cc: _____

EX #1

Staff Signature _____ Date _____

Ms. Dover

4-4-22

I need some help obtaining some information. I have a hearing coming up in the Arkansas State Claim Commission and I need some information on a few ADC employees and ADC inmates so I can subpoena them to the hearing.

1. Its two (2) employees that use to work here on (D) shift 40 Mallard and c/o Smith. I need ~~their~~ their full name and last know address.
2. I need the following inmates ADC number:
Travis Manning, Justin Hudman, Calvin Marshall.
3. I need the following employees full name and address. Sgt. Jenkins/white (Property officer) and Sgt. Palmer (Max sanitation)

Could you please gather this info and send to me ASAP. Thank you and God Bless

Kwasi McKhoney

Ex #2



DATE: 04-04-2022

FROM: *Mrs. Dover, Records Supervisor* **RE:** Your Request/jc

TO: McKinney, Kwasi

ADC [REDACTED]

BKS# ISO 3 /87 U

The Records Department does not provide the information you are requesting.

Ex #3

From: [Roni Gean \(DOC\)](#)
To: [Jerri Swiney \(DOC\)](#)
Cc: [Thomas Burns \(DOC\)](#); [Roni Gean \(DOC\)](#); [Kathryn Irby](#)
Subject: FW: HEARING RESCHEDULED: McKinney v. ADC, Claim No. 200909
Date: Monday, June 6, 2022 12:43:19 PM
Attachments: [McKinney v. ADC -- 200909 -- hearing rescheduling ltr.pdf](#)
Importance: High

Good afternoon,
Attached is the information regarding inmate's Claims Commission hearing set for 7/15/22 at 9:00 AM, along with the ZOOM information.
Thank you for arranging his attendance.

Roni Gean

Administrative Specialist III
DOC Division of Correction
Internal Affairs Division (870) 267-6218
Legal Division (870) 267-6844
6814 Princeton Pike, Pine Bluff, AR 71602
roni.gean@arkansas.gov

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From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Monday, May 23, 2022 1:18 PM
To: Thomas Burns (DOC) <Thomas.Burns@arkansas.gov>
Cc: Roni Gean (DOC) <Roni.Gean@arkansas.gov>
Subject: HEARING RESCHEDULED: McKinney v. ADC, Claim No. 200909
Thomas, please see attached.
Thanks,
Kathryn

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

May 23, 2022

Mr. Kwasi McKinney (ADC [REDACTED])
[REDACTED]
[REDACTED]

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602-9411

(via email)

RE: ***Kwasi McKinney v. Arkansas Division of Correction***
Claim No. 200909

Dear Mr. McKinney and Mr. Burns,

Due to a scheduling conflict, the Claims Commission has rescheduled this claim for hearing on Friday, July 15, 2022, beginning at 9:00 a.m. All parties will attend via Zoom. The Zoom invitation is enclosed, and the Claims Commission asks that Mr. Burns provide the Zoom invitation to Mr. McKinney's unit.

Each party's witness lists, exhibit lists, and exhibits are due by Friday, June 3, 2022. If the parties would like for the Claims Commission to review prehearing briefs, the briefs are due at the same time.

If Claimant would like to call other inmates or ADC employees as witnesses, Claimant will need to submit subpoena requests by June 3, 2022. The subpoena requests must include the witnesses' names and addresses. The Claims Commission notes that the subpoena requests previously submitted by Claimant do not include addresses or a certificate of service indicating that the filing was served upon ADC. Claimant may resubmit subpoena requests with the requested information added on or before June 3, 2022. If ADC objects to issuance of any subpoena, ADC will have until June 8, 2022, to file a detailed objection.

If Claimant would like to call a witness outside of ADC, Claimant will need to arrange for that witness's virtual attendance at the hearing. Claimant can direct the witness to contact the Claims Commission for the Zoom invitation. If a subpoena will be necessary to compel a witness's testimony, Claimant will need to submit a subpoena request by June 3, 2022. The subpoena request must include the witness's name and address. Once the Claims Commission issues the subpoena, Claimant will need to have the subpoena served upon the witness pursuant to Rule 45 of the Arkansas Rules of Civil Procedure.

If Respondent will require subpoenas in order to compel the testimony of any of its witnesses, those subpoena requests are also due on June 3, 2022.

Absent good cause shown, any subpoena requests received after June 3, 2022, will be denied.

To the extent that either party intends to file a motion of any kind, absent a showing of good cause, the motion must be submitted in sufficient time to allow the motion to be fully briefed by June 3, 2022.

Please note that a copy of any subpoena requests, witness lists, exhibit lists, and exhibits must be served upon the opposing party via U.S. Mail in accordance with the Arkansas Rules of Civil Procedure.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: kmirby

The Claims Commission is inviting you to a scheduled Zoom meeting.

Topic: Claims Commission -- hearings

Time: Jul 15, 2022 09:00 AM Central Time (US and Canada)

Join Zoom Meeting

<https://us06web.zoom.us/j/84188580665?pwd=MHdCUHhjS2RwSFFYnJhKdXBiSDlqdz09>

Meeting ID: 841 8858 0665

Passcode: hn8UgY

One tap mobile

+13126266799,,84188580665#,,, *476410# US (Chicago)

+19294362866,,84188580665#,,, *476410# US (New York)

Dial by your location

+1 312 626 6799 US (Chicago)

+1 929 436 2866 US (New York)

+1 301 715 8592 US (Washington DC)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

Meeting ID: 841 8858 0665

Passcode: 476410

Find your local number: <https://us06web.zoom.us/u/kbsCOcaVeE>

JUN 04 2022

Arkansas State Claims Commission

RECEIVED

Kwasi McKinney

Claimant

v.

Claim No. 200909

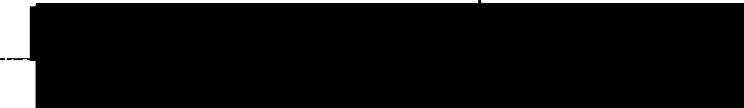
Arkansas Division of Correction

Respondent

Motion for Issuance of Subpoenas

Comes Now, Kwasi McKinney, claimant herein after, through this Motion for Issuance of Subpoenas, states as follow:

1. That the Commission has set a hearing for Claimant's claim for June 15, 2022 at 9:00 a.m. via Zoom at the



2. The claimant asserts that he tried to obtain the addresses of the witnesses that he ~~wants~~^{intends} to call through the ADC Records Department Supervisor Mrs. Dover but to no avail. (Ex 1-3)

3. The claimant asserts the below listed witnesses have fact evidence that is pertinent to this claim and the Commission should in seeking justice, order these witnesses to appear and give testimony under oath and on the record.

A. Sgt. Annette

ADC Employee

Camera and Phone Operator

Needs camera footage October 16, 2019 ~~12:00~~ 12:00 A.M - 3:00 P.M

B. C/O Mallard

ADC Employee

(D) shift (2019)

C. C/O Smith

ADC Employee

(D) shift (2019)

D. Sgt. Jenkins/White

ADC Employee

~~Max Sanitation~~ Property Officer

E. Sgt. Palmer

ADC Employee

Max Sanitation


F. Travis Manning, Justin Hudman, Calvin Marshall, Cedrick

Lewis, Terrance Moore, Terin McMillian

ADC Inmates

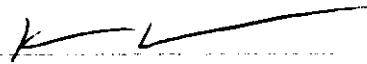
Wherefore, Kwasi McKinney request this Commission issue subpoena for the list of witnesses and serve on said witnesses and any other relief this Commission deems appropriate and just.

Respectfully Submitted


Kwasi McKinney

certificate of service

I, Kwasi McKinney do hereby certify that on this 27th day of May 2022 I have Served on Respondent through its attorney Thomas Burnas, at 6814 Princeton Pike, Pine Bluff AR 71602 by placing this Claimant's Motion for Issuance of Subpoenas in the U.S. Mail with sufficient postage affixed to ensure delivery.



Inmate Request Form

This form is to be used by inmates to contact staff with request on issues they may have. You should allow five working days to receive a response to your request. This is the East Arkansas Regional Unit in house form.

Name: Kwasi McKinney ADC Number [REDACTED] Barracks: [REDACTED] Date: 4-4-22

Staff Directed to: Ms. Dover Office: Records

My request is directed to the following area: (check one)

- | | | | |
|--|---|--------------------------------------|---|
| Chaplain <input type="checkbox"/> | Classification <input type="checkbox"/> | Commissary <input type="checkbox"/> | Assistant/ Deputy Warden <input type="checkbox"/> |
| Issuance <input type="checkbox"/> | Food Service <input type="checkbox"/> | Hobby Craft <input type="checkbox"/> | General Library <input type="checkbox"/> |
| Law Library <input type="checkbox"/> | Laundry <input type="checkbox"/> | Mail Room <input type="checkbox"/> | Medical <input type="checkbox"/> |
| Mental Health <input type="checkbox"/> | Parole <input type="checkbox"/> | Property <input type="checkbox"/> | Records <input checked="" type="checkbox"/> |
| Security <input type="checkbox"/> | Visitation <input type="checkbox"/> | Warden <input type="checkbox"/> | Other: <input type="checkbox"/> |

Give a detailed reason for your request: Could you please respond to the information inside the folder,

Thank you

Have you talked to any staff about your request? Yes No
If yes, to whom did you speak with and when?

[Signature] 4-4-22
Inmate Signature/ Date

Staff Responding: _____ Date: _____

Response: _____

RECEIVED
RECORDS DEPARTMENT

APR 04 2022

I am referring this to: [REDACTED]

Cc: _____

EX #1

Staff Signature _____ Date _____

Ms. Dover

4-4-22

I need some help obtaining some information. I have a hearing coming up in the Arkansas State Claim Commission and I need some information on a few ADC employees and ADC inmates so I can subpoena them to the hearing.

1. Its two (2) employees that use to work here on (D) shift 40 Mallard and c/o Smith. I need ~~their~~ their full name and last know address.
2. I need the following inmates ADC number:
Travis Manning, Justin Hudman, Calvin Marshall.
3. I need the following employees full name and address. Sgt. Jenkins/white (Property officer) and Sgt. Palmer (Max sanitation)

Could you please gather this info and send to me ASAP. Thank you and God Bless

Kwasi McKhoney

Ex #2

303



DATE: 04-04-2022

FROM: *Mrs. Dover, Records Supervisor* **RE:** Your Request/jc

TO: McKinney, Kwasi

ADC

BKS# ISO 3 /87 U

The Records Department does not provide the information you are requesting.

Ex #3

Mika Tucker

From: Roni Gean (DOC)
Sent: Monday, June 6, 2022 12:43 PM
To: Jerri Swiney (DOC)
Cc: Thomas Burns (DOC); Roni Gean (DOC); Kathryn Irby
Subject: FW: HEARING RESCHEDULED: McKinney v. ADC, Claim No. 200909
Attachments: McKinney v. ADC -- 200909 -- hearing rescheduling ltr.pdf

Importance: High

Good afternoon,

Attached is the information regarding inmate's Claims Commission hearing set for 7/15/22 at 9:00 AM, along with the ZOOM information.

Thank you for arranging his attendance.

Roni Gean

Administrative Specialist III
DOC Division of Correction
Internal Affairs Division (870) 267-6218
Legal Division (870) 267-6844
6814 Princeton Pike, Pine Bluff, AR 71602
roni.gean@arkansas.gov

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From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Monday, May 23, 2022 1:18 PM
To: Thomas Burns (DOC) <Thomas.Burns@arkansas.gov>
Cc: Roni Gean (DOC) <Roni.Gean@arkansas.gov>
Subject: HEARING RESCHEDULED: McKinney v. ADC, Claim No. 200909

Thomas, please see attached.

Thanks,
Kathryn

Mika Tucker

From: Kathryn Irby
Sent: Wednesday, June 22, 2022 11:37 AM
To: Thomas Burns (DOC)
Cc: Roni Gean (DOC)
Subject: HEARING RESCHEDULED: McKinney v. ADC, Claim No. 200909
Attachments: McKinney v. ADC -- 200909 -- hearing rescheduled, subpoena requests did not include addresses.pdf

Thomas, please see attached.

Thanks,
Kathryn

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

June 22, 2022

Mr. Kwasi McKinney (ADC [REDACTED])
[REDACTED]
[REDACTED]

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602-9411

(via email)

RE: *Kwasi McKinney v. Arkansas Division of Correction*
Claim No. 200909

Dear Mr. McKinney and Mr. Burns,

The Claims Commission has rescheduled this claim for hearing on **Thursday, October 13, 2022**. All parties will attend via Zoom. The Zoom invite is enclosed herein.

Each party's witness lists, exhibit lists, and exhibits are due by Thursday, September 1, 2022. If the parties would like for the Claims Commission to review prehearing briefs, the briefs are due at the same time.

The Claims Commission has received subpoena requests from Mr. McKinney, but Mr. McKinney did not provide addresses for the witnesses, such that the Claims Commission cannot issue the subpoenas. However, Mr. McKinney may submit revised subpoena requests by September 1, 2022. If ADC objects to issuance of any subpoena, ADC will have until Wednesday, September 7, 2022, to file detailed objections.

If Respondent will require subpoenas in order to compel the testimony of any of its witnesses, those subpoena requests are also due on September 1, 2022.

Absent good cause shown, any subpoena requests received after September 1, 2022, will be denied.

To the extent that either party intends to file a motion of any kind, absent a showing of good cause, the motion must be submitted in sufficient time to allow the motion to be fully briefed by September 1, 2022.

Please note that a copy of any witness lists, exhibit lists, and exhibits must be served upon the opposing party via U.S. Mail in accordance with the Arkansas Rules of Civil Procedure.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: kmirby

The Claims Commission is inviting you to a scheduled Zoom meeting.

Topic: Claims Commission -- hearings

Time: Oct 13, 2022 09:00 AM Central Time (US and Canada)

Join Zoom Meeting

<https://us06web.zoom.us/j/87693102786?pwd=ZnNoOXU5b1p0a3VlKzldWFd6b2I3dz09>

Meeting ID: 876 9310 2786

Passcode: KjpZ0x

One tap mobile

+13017158592,,87693102786#,,, *798674# US (Washington DC)

+13126266799,,87693102786#,,, *798674# US (Chicago)

Dial by your location

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 929 436 2866 US (New York)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

Meeting ID: 876 9310 2786

Passcode: 798674

Find your local number: <https://us06web.zoom.us/j/87693102786>

AUG 20 2022

RECEIVED

Kwasi McKinney # [REDACTED]
[REDACTED]

Arkansas State Claims Commission

101 E. Capital Ave., suite 410

Little Rock, AR 72201-3823

RE: McKinney # [REDACTED] v Arkansas Department of
Corrections, Division of Corrections, NO: 200909;

1. Claimants Motion for Summary Judgement
2. Claimants Brief in Support of Motion for Summary Judgement
3. Claimants Statement of Undisputed Facts

Dear Sir:

Please find enclosed the Claimants Motion for Summary Judgement, Claimants Brief in support of Motion for Summary Judgement and Claimants Statement of Undisputed Facts for filing in the above reference claim.

Please notify me of any action taken by the Commission.

Coordrolly

cc: file
Enclosed (3)

AUG 20 2022

Before The Arkansas State Claims Commission

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Kwasi McKinney

Claimant

v

NO: 200909

Arkansas Department of Corrections,
Division of Corrections

Respondent

Claimants' Motion For Summary Judgement

Comes Now, Kwasi McKinney (the "Claimant") here in after, pro-se, and through this his Motion for Summary Judgement, states as follows:

1. Claimant did on March 4, 2020 file this instant claim in the Arkansas State Claims Commission (the "Claims Commission") seeking monetary compensation for the lost, damaged or missing property.

2. Claimant seeks summary judgement as to the liability of respondent for damages to the plaintiff of loss, damaged denial of his personal property.

3. The reasons therefore are set forth in the Claimants declaration and brief in support of this motion.

4. Pursuant to Federal Rules of Civil Procedure Rule 56,

AUG 20 2022

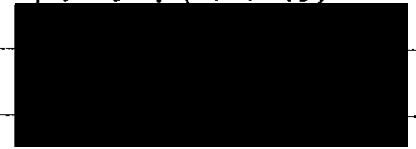
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claimant seek Summary Judgement.

WHEREFORE, Kwasi McKinney prays this Commission grant his Motion for Summary Judgement and any other relief this Commission deems appropriate and just.

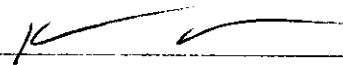

Respectfully Submitted


Kwasi McKinney 



Certificate of Service

I, Kwasi McKinney do hereby swear that on this 15th day of ~~September~~^{August} 2022 I have served on Respondent through Attorney Thomas Burns, at 6814 Princeton Pike, Pine Bluff, AR 71620 by serving a copy of my motion for Summary Judgement, and a copy of My Brief in Support of Motion for Summary Judgement along with a copy of my Undisputed Stated of Material Facts by placing same in the U.S. Mail with sufficient postage affixed to ~~ensure~~ ensure delivery.


Kwasi McKinney# 

AUG 20 2022

Before The Arkansas State Claims Commission

RECEIVED

Kwasi McKinney

Claimant

v.

No. 200909

Arkansas Department of Corrections,
Division of Corrections

Respondent

Claimants Brief in Support
of Motion for Summary Judgement

I

Statement of Case

This is a small claims complaint filed March 4, 2020 in the Arkansas State Claims Commission (the "Claims Commission") seeking damages against respondent for their failure to properly collect, inventory, secure, and return claimants personal property. The loss, damage misplacement of claimants personal property (see Claimants Statement of Undisputed Facts ¶ 15), violated Claimants liberty interest in having his personal property returned after being placed on behavioral control and punitive isolation. (see Claimants Statement of undisputed facts ¶ 4, 8, 11).

Arkansas
State Claims Commission
AUG 20 2022

II

Statement of Facts

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As set forth in Claimants' Statement of Undisputed facts the respondents moved claimant from his cell in Max 4 barracks 41 cell to behavioral control in Isolation. Respondent was responsible for packing, control, and storage of all claimants' personal property until claimant was or did complete his assigned 30 days of punitive isolation. (See Claimants' Statement of Undisputed facts ¶ 8).

Cpl Mallard and CO Smith did allegedly pack claimants' personal property. (See Claimants' State of Undisputed Facts ¶ 5).

Cpl Mallard and CO Smith did not afford claimant the opportunity to sign ADC form F-841-1 on October 17-18, 2019 when these two individuals allegedly secured claimants property and stored in the unit property room. (See Claimants Statement of Undisputed facts ¶ 1).

Sgt. Palmer, the Sanitation Sgt. notified claimant on October 18, 2019 that when cleaning Max 4-41 cell there was a trove of legal papers, legal mail, legal books and numerous other items of claimant still in the cell. (See Claimants' Statement of Undisputed facts ¶ 9, 9(a)).

On November 22, 2019 after release from punitive isolation claimant was forced by Sgt. Jenkins/white, the EAFU property Sgt. to sign

for the property and make no complaint about the missing property (see Claimants Statement of Undisputed facts ¶¶ 10, 11, 12, 13).

Argument I

In this instant case prison officials knowingly and intentionally failed to secure Claimants personal property after removing him from his cell and placing him on behavioral control then punitive isolation.

Claimant asserts he was entitled to the proper securing of his property by Cpl Mallard and Co Smith, and Sgt. Jenkins/White as well as the return of all of his personal property on November 22, 2019 which prison officials failed to do because they could not do.

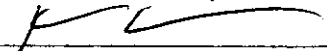

Claimant maintains that prison officials have knowingly and intentionally denied him his property valued at \$ 3,155.29. Claimant seeks damages for loss damage and destruction of his property of \$ 3,155.29 and an additional award of \$ 10,000⁰⁰ for a total property damage award of \$ 13,155²⁹.

Claimant maintains that a jury could reasonably find in favor of Claimants based on all the facts presented in Claimants Brief in Support, Statement of Undisputed facts

and Summary Judgement and therefore this Arkansas State Claims Commission should grant claimants Motion for Summary Judgement, Anderson v. Liberty Lobby, Inc., 477 US 242, 248, 106 S.Ct. 2505 (1986)

WHEREfore, Kwasi McKinney asserts for the foregoing reasons, his Motion for Summary Judgement should be granted and Claimant awarded \$ 13,155.29 and any other relief this Commission deems appropriate and just.

Respectfully Submitted


Kwasi McKinney # 

I, Kwasi McKinney do hereby swear that on this 15th day of August 2022 I have served on Respondent through Attorney Thomas Burns, at 6418 Princeton Pike, Pine Bluff, AR, 71602 a true Copy of my Motion for Summary Judgement, Brief in Support of my Summary Judgement and Undisputed facts by placing same in the U.S. Mail with sufficient postage affixed to ensure delivery.

Arkansas
State Claims Commission

AUG 20 2022

RECEIVED

Before The Arkansas State Claims Commission

Kwasi McKinney

Claimant

v

NO: 200909

Arkansas Department of Corrections,
Division of Corrections

Respondent

Arkansas
State Claims Commission

AUG 20 2022

Claimants Statement of
Undisputed Facts

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Comes Now, Kwasi McKinney (the "Claimants") here in after, and presents his statement of undisputed facts pursuant to Local Rule 56.1, as follows:

1. Claimant, Kwasi McKinney, ADC # [REDACTED] an inmate in the custody of the Arkansas Department of Corrections, Division of Corrections. (Complaint filed March 4, 2020 the "Complaint").
2. Claimant alleged that on October 17 2019, the date of the offense, he was housed at the [REDACTED] of the Arkansas Department of Corrections ("ADC") in Maximum Security Unit, Zone 2, Max 4 Barracks, cell 41. (see Complaint)
3. At approximately 9:22 pm ADC cpl Mallard and Cpl. Jones were escorting inmate G. Hall, ADC # 108184 past Claimants

AUG 20 2022

cell when claimant spit on inmate Hall.

RECEIVED

4. Cpl Jones alleged some of the spit landed on his face so, Claimant, at approximately 9:30 pm was removed from his cell, Max 4-cell- 41 and placed in isolation on behavioral control on this same date October 17, 2019
5. On October 17-18, 2019, Cpl Mallard and Correctional officer ("CO") Smith, some time after Claimants was removed from his cell to isolation, entered claimants cell, Max 4 cell 41 and proceeded to pack Claimants personal property.
6. On October 17, 2019 Cpl Mallard and Co Smith failed to pack all of Claimants property. (See lists of missing items listed in claimants Response to Respondent First Set of Requested for Admissions 71 answer 1).
7. On October 17, 2019 Cpl Mallard and Co Smith failed to adhere to ADC's property policy and present to claimant a list of all properties taken into possession and put in the unit property office. (See Respondents Motion to Dismiss; Exhibit "A").
8. Claimant was served a disciplinary report of rules violations for the incidents which occurred on October 17, 2019 written by Cpl. C. Jones. Claimant was found guilty by the disciplinary hearing officer and assessed 30 days of punitive isolation

among other punitive restrictions. (See incident report # 2019-10-215).

9. On October 18, 2019, the sanitation Officer, Sgt. Palmer informed me that when they were ~~doing~~ cleaning up my previous cell, Max 4-41, the Cleaning crew found a trove of legal papers, legal mail, legal books and numerous other items of mine still in the cell which officers Mallard and Smith did not pack or put in the Unit property room.

9(a) Sgt. Palmer could not recall each and every item but says she gave the property left behind by Mallard and Smith to property Sgt. Jenkins.

10. On November 22, 2019 Claimant ~~was~~ completed his punitive restriction in Isolation and was moved to East Arkansas Regional Unit, Zone 4 Max 6 barracks cell 29.

11. On November 22, 2019 Property Sgt. Jenkins/White came to my cell, Max 6-29 with one bag of property. I asked Sgt. Jenkins/White where the rest of my property was and Sgt. Jenkins/White said this was all she had. I told Sgt. Jenkins/White this was not all of my property.

12. Sgt. Jenkins/White ordered me to sign the property form or she would not give me any of my property. I was forced

to sign the F-841-1 on November 22, 2019 even though I had property missing. (see Respondents Motion to Dismiss; Exhibit "A")

13. After getting the one bag of property inside my cell Max 6-29, I began an inventory and after noting a trove of missing ~~property~~ items, Claimant filed a grievance on November 25, 2019 making a claim regarding Claimant's missing property (Grievance [REDACTED] 19-02966; filed November 25, 2019; Exhausted February 12, 2020; attached to Complaint)

14. Claimant, having exhausted the ADC Inmate grievance policy in accordance with the Prison Litigation Reform Act ("PLRA") of 1996, filed his complaint in the Arkansas State Claims Commission seeking damages for his lost or stolen property.

15. Claimant asserts the below listed articles of property were lost, stolen or damaged:

- 1.) 1- Arkansas Court Rules Volume I - Cost to Claimant \$165.⁰⁰; and
- 2.) 1- Black Law Dictionary 9th Edition - cost to Claimant \$149.⁰⁰; and
- 3.) 1- Trial Transcript (1/2 is missing) cost to Claimant \$2,005.²⁰; and
- 4.) 1- Remand Transcript (missing 1/3) cost to Claimant \$315.⁰⁰; and
- 5.) 1- Arkansas Court Rule Volume II - cost to Claimant \$126.⁰⁰; and
- 6.) 1- Prison Legal Guide (Post conviction) cost to Claimant \$159.⁰⁰; and
- 7.) 1- Federal Rule of Civil Procedure cost to Claimant 49.95.⁰⁰; and
- 8.) 1- Prison Litigation Manual cost to Claimant \$54.95; and
- 9.) 1- Habeas Cite Book cost to Claimant ~~\$49.95~~ ^{\$49.95}; and

AUG 20 2022

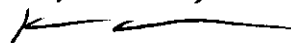
RECEIVED


- 10) 1- Loophole cost to Claimant \$6.95; and
- 11) 1- Tools of Argument cost to Claimant \$12.50; and
- 12) 1- Jailhouse Lawyer Manual 10th Edition cost to Claimant \$16.95; and
- 13) 1- How to sue your dead beat Attorney and Law Firm cost to Claimant \$15.95; and
- 14) Total lost property of \$ 3155.29, not including damages of \$10,000⁰⁰ total damages of \$13155.29.

16. Claimant asserts that he has had to develop and file his Ark. Rules of Criminal Procedure Rule 37 petition without the use of his legal books, papers, transcripts.

17. Claimant asserts that he has had to file an appeal to Arkansas Court of Appeals without the use of his legal books, papers and transcripts.

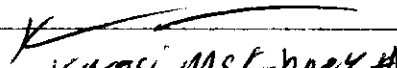

Respectfully Submitted



Kwasi McKinney # 177


Certificate of Service

I, Kwasi McKinney do hereby swear that on this 15th day of August 2022. I have served a true copy of my Statement of Undisputed Facts on Respondent through Attorney Thomas Burns, at 6814 Princeton Pike, Pine Bluff, AR 71602, by placing same in the U.S. Mail with sufficient postage affixed to ensure delivery.


Kwasi McKinney # 
320

Mika Tucker

From: Thomas Burns (DOC)
Sent: Monday, September 12, 2022 9:02 AM
To: ASCC Pleadings
Cc: Leslie Browning (DOC)
Subject: Kwasi McKinney v ADC 200909
Attachments: 4564_001.pdf

ADC response to MSJ

Thomas Burns
General Counsel
Arkansas Department of Corrections
Division of Correction
6814 Princeton Pike
Pine Bluff Arkansas 71602
Phone: (870) 267-6845
Fax: (870) 267-6373
Cell: (870) 515-0918
thomas.burns@arkansas.gov

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI McKINNEY (AD

CLAIMANT

V.

NO. 200909

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

ADC RESPONSE TO MOTION FOR SUMMARY JUDGMENT

Respondent, Arkansas Department of Correction (ADC), for its reply, states:

1. The ADC denies each and every allegation contained in the Inmate's motion unless specifically admitted herein. In fact every thing in the Inmates complaint is disputed.
2. The ADC does not have the facts or knowledge to either admit or deny the averments of paragraph 1, therefore denies.
3. The ADC denies paragraph 2.
4. The ADC denies paragraph 3.
5. The ADC denies paragraph 4.
6. There is absolutely nothing in the inmates motion that remotely shows summary judgment is appropriate.
7. The ADC should be awarded fees and costs for having to respond to a frivolous motion.
8. The inmate complaint should be dismissed.

WHEREFORE, Respondent prays that the inmates motion and complaint to dismissed; for their attorney's fees and costs; and all other just and proper relief to which they may be entitled.

Respectfully submitted,



Thomas Burns (02006)
Division of Correction
Legal Department
6814 Princeton Pike
Pine Bluff, AR 71602
(870) 267-6845 Office
(870) 267-6373 Facsimile
thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 12th day of September 2022, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Kwasi McKinney [REDACTED]

[REDACTED]



Thomas Burns

NOV 08 2022

In The Arkansas State Claim Commission

RECEIVED

Kwasi McKinney

Claimant

v.

No. 200909

Arkansas Division of Correction

Respondent

Dear ASCC,

10-6-22

I have a hearing set for October 13, 2022 on the above-styled claim. This claim has been rescheduled three times. I have notes and evidence that I intend to bring with me to the hearing but all of my legal material was confiscated by Sgt. White/Jenkins and stored in the property room. Sgt. White/Jenkins is one of the officers that is involved in this claim. Sgt. White/Jenkins is trying to hinder me from prevailing in my claim by taking away my legal material.

Wherefore, I Kwasi McKinney ask this Commission to order Sgt. White/Jenkins to give me my legal material that pertains to this claim, and any other relief may be deemed proper and just.

Kwasi McKinney #
16

Dear ASCC,

10-6-22

Could you please give me an update on my
claim: Kwasi McKinney v. Arkansas Division of Correction
No. 221100. Thank you very much.

Kwasi McKinney



Mika Tucker

From: Misty Scott on behalf of ASCC Pleadings
Sent: Thursday, January 5, 2023 3:30 PM
To: Thomas Burns (DOC)
Cc: Leslie Browning (DOC); ASCC Pleadings; Kathryn Irby
Subject: ORDER: Kwasi McKinney v. ADC, Claim No. 200909
Attachments: Kwasi McKinney v. ADC5.pdf; Kwasi McKinney-order4.pdf

Thomas:

Please see attached. Contact Kathryn Irby with any questions.

Thank you,

Misty

Misty Scott
Arkansas State Claims Commission

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

January 5, 2023

Mr. Kwasi McKinney (ADC [REDACTED])
[REDACTED]
[REDACTED]

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602-9411

(via email)

Re: ***Kwasi McKinney v. Arkansas Division of Correction***
Claim No. 200909

Dear Mr. McKinney and Mr. Burns:

Enclosed please find an Order entered on January 3, 2023, by the Arkansas State Claims Commission. If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: msscott

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY (ADC [REDACTED])

CLAIMANT

V.

CLAIM NO. 200909

**ARKANSAS DIVISION OF
CORRECTION**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is a claim filed by Kwasi McKinney (the “Claimant”) against the Arkansas Division of Correction (the “Respondent”). At the hearing on October 13, 2022, Claimant proceeded *pro se*, and Thomas Burns appeared on behalf of Respondent. Based upon a review of the pleadings, testimony and evidence presented by the parties, and the law of the State of Arkansas, the Claims Commission hereby finds as follows:

1. Claimant filed his claim on March 4, 2020, seeking damages for lost property.
2. Respondent filed a motion to dismiss, which was denied by the Claims Commission on October 20, 2020. As part of the order denying the motion to dismiss, the parties were instructed to begin discovery.
3. On December 7, 2021, the Claims Commission denied Claimant’s motion for immediate injunction and motion for sanctions.
4. Respondent filed a motion to strike Claimant’s response to Respondent’s motion to dismiss, which was denied by the Claims Commission on March 18, 2020.
5. The claim was then set for hearing. In the June 22, 2022, hearing letter, the parties were notified that, if either party intended to file a motion prior to the hearing, the motion must be filed in sufficient time to allow it to be fully briefed by September 1, 2022.

6. On August 20, 2022, Claimant filed a motion for summary judgment and statement of undisputed facts.

7. At the hearing, Claimant testified that he was removed from his cell and placed in isolation. When Claimant's property was returned to him, a number of items were missing, including his legal transcripts and legal books. The legal transcripts and legal books are the items about which he is most concerned. On cross-examination, Claimant agreed that he was placed in isolation on October 17, 2019, and that he attached a F841 inventory to his complaint, although Claimant would not agree that the F841 shown by Respondent was the same one as was attached to his complaint.

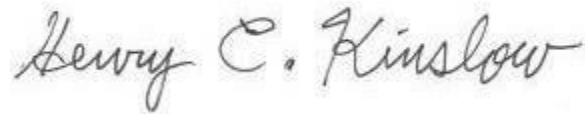
8. With regard to Claimant's motion for summary judgment, the Claims Commission finds that it is untimely pursuant to the hearing letter, as Claimant's motion for summary judgment was not filed in sufficient time to allow the motion to be fully briefed by the parties by September 1, 2022. As such, the motion is DENIED.

9. With regard to Claimant's claim, the Claims Commission finds that Claimant did not present sufficient evidence regarding the loss of his property. As such, Claimant's claim is DENIED and DISMISSED.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow, Chair



ARKANSAS STATE CLAIMS COMMISSION
Sylvester Smith

DATE: January 3, 2023

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

Mika Tucker

From: Misty Scott on behalf of ASCC Pleadings
Sent: Friday, January 20, 2023 2:52 PM
To: Thomas Burns (DOC)
Cc: Leslie Browning (DOC); ASCC Pleadings; Mika Tucker
Subject: Kwasi McKinney v. ADC, Claim No. 200909
Attachments: Kwasi McKinney v. ADC- 200909 order and claim file ltr.pdf; McKinney-order2.pdf

Thomas:

Please see attached. Contact Mika Tucker with any questions.

Thank you,

Misty

Misty Scott
Arkansas State Claims Commission

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

January 20, 2023

Mr. Kwasi McKinney (ADC [REDACTED])
[REDACTED]
[REDACTED]

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602-9411

(via email)

Re: ***Kwasi McKinney v. Arkansas Department of Correction***
Claim No. 200909

Dear Mr. McKinney and Mr. Burns:

Enclosed please find an Order entered January 19, 2023, by the Arkansas State Claims Commission. I am also enclosing a copy of the claim file for Mr. McKinney pursuant to the Order.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Mika Tucker

ES: mtucker

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY (ADC ████████)

CLAIMANT

V.

CLAIM NO. 200909

**ARKANSAS DIVISION OF
CORRECTION**

RESPONDENT

AMENDED ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is a claim filed by Kwasi McKinney (the “Claimant”) against the Arkansas Division of Correction (the “Respondent”). Also pending is Claimant’s motion for summary judgment. At the hearing on October 13, 2022, Claimant proceeded *pro se*, and Thomas Burns appeared on behalf of Respondent. Based upon a review of the pleadings, as well as the argument of the parties and the law of the State of Arkansas, the Claims Commission hereby finds as follows:

1. Claimant filed his claim on March 4, 2020, seeking damages for lost property.
2. Respondent filed a motion to dismiss, which was denied by the Claims Commission on October 20, 2020. As part of that order denying the motion, the parties were instructed to begin discovery.
3. During discovery, the Claims Commission entered an order denying Respondent’s motion to deem admitted requests for admission propounded to Claimant as well as Claimant’s motion for summary judgment. The Claims Commission also entered an order denying Claimant’s motion for injunction as well as Claimant’s motion for sanctions related to Respondent’s alleged failure to respond to the requests for admission and requests for production propounded by Claimant.

4. The Claims Commission sent the parties notice of hearing on June 22, 2022, which provided that, absent a showing of good cause, motions of any kind must be submitted in sufficient time to allow the motion to be fully briefed by September 1, 2022.

5. Claimant filed a motion for summary judgment on August 20, 2022. Respondent filed a response to the motion for summary judgment.

6. At the hearing, Claimant testified that he was removed from his cell and placed in isolation about three years ago. When Claimant's property was returned to him after he got out of isolation, items were missing, including his legal transcripts and books. The legal transcripts and legal books are the items about which he is most concerned. Claimant stated that he was unable to testify as he would like because the legal materials related to this claim had been taken prior to the hearing. On cross-examination, Respondent presented an F-841 form dated October 19, 2019. Claimant testified that it did not list all the property he had at the time of his isolation. Claimant testified he was unsure whether this was the form he submitted with his claim because someone had taken his legal materials. He also testified that an F-841 form dated November 22, 2019, was not like his other property forms where, under the legal mail entry, it said "bundle" instead of "one" because at the time of the incident, on October 19, 2019, he had bundles of personal mail and more than one legal transcript. Claimant pointed out that the form said he had zero regular "mail." He asked, "how could that be?" since he has been locked up for years. He further testified that he had "bundles and bundles" of legal mail at that time.

7. Upon a question from a commissioner, Claimant testified that he was missing his law journal, court rule books, trial transcripts, and a law dictionary, which were provided to him by his family. Claimant also testified he was missing an MP4 player. Claimant testified that his transcripts and legal books would cost \$3,500.00 to \$4,000.00 to replace.

8. With regard to Claimant's motion for summary judgment, the Claims Commission finds that it is untimely pursuant to the hearing letter, as Claimant's motion for summary judgment was not filed in sufficient time to allow the motion to be fully briefed by the parties by September 1, 2022. As such, the motion is DENIED.

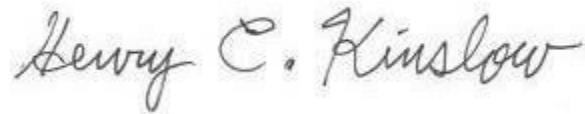
9. The Claims Commission finds the testimony of Claimant to be persuasive and that Claimant raised questions about the reliability of the F-841 forms. Accordingly, and to correct the unintentional error in its January 3, 2023, decision, the Claims Commission finds that there is sufficient evidence of negligence on the part of Respondent to warrant an award in Claimant's favor. However, the Claims Commission further finds that Claimant was unable to present detailed testimony related to his damages because his legal materials were taken from him prior to the hearing. As such, the Claims Commission will provide Claimant with a copy of the claim file and will set a hearing to determine the amount of damages to be awarded.

10. The Claims Commission notes that Claimant submitted correspondence to the Claims Commission after the October 13, 2022, hearing, requesting that the Claims Commission order Respondent's employee to return Claimant's legal materials related to this claim. The Claims Commission must deny this request, as it does not have authority to grant such relief. However, to the extent that Respondent is able to return Claimant's legal materials to him prior to the damages hearing, the Claims Commission directs the parties to provide detailed notification of what has been returned.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow, Chair



ARKANSAS STATE CLAIMS COMMISSION
Sylvester Smith

DATE: January 19, 2023

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

FEB 23 2023

RECEIVED

February 20, 2023

Ihuasi McKinney V. Arkansas Department of Correction
Claim No. 200909

Dear ASCC,

I was directed to notify the Commission when my property was returned to me. Most of my property was returned to me on 2-13-23. The property officer is still holding some of my legal work in her office. Also could the commission notify me when a hearing date is set on my claim. Thank You.

Ihuasi McKinney

Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, AR 71602-9411

Mika Tucker

From: Kathryn Irby
Sent: Wednesday, March 22, 2023 11:59 AM
To: Thomas Burns (DOC); Leslie Browning (DOC)
Cc: Mika Tucker
Subject: HEARING SCHEDULED: McKinney v. ADC, Claim No. 200909
Attachments: McKinney v. ADC -- 200909 -- hearing ltr (damages portion of claim).pdf

Thomas, please see attached. Please make sure Mr. McKinney's unit is aware of this Zoom hearing. Thanks!

Kathryn

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

March 22, 2023

Mr. Kwasi McKinney (ADC [REDACTED])
[REDACTED]
[REDACTED]

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602-9411

(via email)

RE: ***Kwasi McKinney v. Arkansas Division of Correction***
Claim No. 200909

Dear Mr. McKinney and Mr. Burns,

The Claims Commission has scheduled a hearing on the damages portion of this claim for **Friday, September 22, 2023**, beginning at 9:00 a.m. All parties will attend via Zoom. The Zoom invitation is enclosed.

Each party's witness lists, exhibit lists, and exhibits are due by August 11, 2023. If the parties would like for the Claims Commission to review prehearing briefs, the briefs are due at the same time.

If Claimant would like to call other inmates or ADC employees as witnesses, Claimant will need to submit subpoena requests by August 11, 2023. The subpoena requests must include the witnesses' names and addresses. If ADC objects to issuance of any subpoena, ADC will have until August 16, 2023, to file a motion to quash or detailed objections to the witness's proposed testimony.

If Claimant would like to call a witness outside of ADC, Claimant will need to arrange for that witness's virtual attendance at the hearing. Claimant can direct the witness to contact the Claims Commission for the Zoom invitation. If a subpoena will be necessary to compel a witness'

testimony, Claimant will need to submit a subpoena request by August 11, 2023. The subpoena request must include the witness's name and address. Once the Claims Commission issues the subpoena, Claimant will need to have the subpoena served upon the witness pursuant to Rule 45 of the Arkansas Rules of Civil Procedure.

If Respondent will require subpoenas in order to compel the testimony of any of its witnesses, those subpoena requests are also due on August 11, 2023.

Absent good cause shown, any subpoena requests received after August 11, 2023, will be denied.

To the extent that either party intends to file a motion of any kind, absent a showing of good cause, the motion must be submitted in sufficient time to allow the motion to be fully briefed by August 11, 2023.

Please note that a copy of any subpoena requests, witness lists, exhibit lists, and exhibits must be served upon the opposing party via U.S. Mail in accordance with the Arkansas Rules of Civil Procedure.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: kmirby

The Claims Commission is inviting you to a scheduled Zoom meeting.

Topic: Claims Commission -- hearings

Time: Sep 22, 2023 09:00 AM Central Time (US and Canada)

Join Zoom Meeting

<https://us06web.zoom.us/j/88499326899?pwd=YUJTZi9ZRnFkbn9aeXdqcTVQUzRmQT09>

Meeting ID: 884 9932 6899

Passcode: waf37R

One tap mobile

+13126266799,,88499326899#,,, *482369# US (Chicago)

+16469313860,,88499326899#,,, *482369# US

Dial by your location

+1 312 626 6799 US (Chicago)

+1 646 931 3860 US

+1 929 436 2866 US (New York)

+1 301 715 8592 US (Washington DC)

+1 305 224 1968 US

+1 309 205 3325 US

+1 564 217 2000 US

+1 669 444 9171 US

+1 669 900 6833 US (San Jose)

+1 689 278 1000 US

+1 719 359 4580 US

+1 253 205 0468 US

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 360 209 5623 US

+1 386 347 5053 US

+1 507 473 4847 US

Meeting ID: 884 9932 6899

Passcode: 482369

Find your local number: <https://us06web.zoom.us/j/88499326899>

KWASI MCKINNEY (ADC [REDACTED])

Arkansas
State Claims Commission CLAIMANT

MAR 24 2023

V.

CLAIM NO. 200909

RECEIVED

ARKANSAS DIVISION OF
CORRECTION

RESPONDENT

PLEADING DETAILING CLAIMANT'S ASSESSMENT OF DAMAGES

Now, before The ARKANSAS STATE CLAIMS COMMISSION, comes The CLAIMANT, KWASI MCKINNEY (ADC [REDACTED]) PRO SE, with his PLEADING Detailing the assessment of The CLAIMANT'S damages. The CLAIMANT States The following:

1. The claimant seeks 14,500.00 as an award for the damages The claimant has suffered due to The negligence on The part of The Respondent, Thus The claim seeks to provide this honorable Commission with The following assessment The award sought based off The damages inflicted,
2. Trial transcripts - \$5,000.00 This is amount is based off The fact that These trial transcripts were a vital part of The claimant's criminal appeal process and without The claimant is unable to continue to litigate in order to regain his freedom. This plus The fact that because as a prisoner The claimant is unable to invoke The Freedom of Information Act These documents are virtually impossible to replace and therefore are priceless
3. Court Rule Books, law dictionary, law journal, MP4/w content - \$4000.00 This amount is based off a reflection of The retail price of These items along with The emotional value of These items that were supplied by my family along with The importance of said items in The claimant's criminal appeal process.

4. Punitive damages = \$3,500.00 This amount is a reflection of the adverse situation that the claimant had to endure which, through its own negligence, the respondent is solely responsible for. The claimant was unable to litigate his criminal appeal process

5. Time, effort, legal, postage cost and emotional stress = \$2,000.00 This amount is a reflection of the almost 3 year process the claimant had to engage in, in order to receive some relief


CONCLUSION

This is a legitimate assessment of the claimant's account of the damages also the plaintiff prays for any and all entitled relief.

CERTIFICATE OF SERVICE

I, Mr. Kwasi McKinney (ADC [redacted]), certify that a copy of the foregoing pleading has been served on the respondent via U.S. Postage service to the following Address:

Mr. Thomas Burns
ADC ATTORNEY
ARKANSAS DIVISION of Correction
6814 Princeton Pike
PINE BLUFF, AR 71602

Respectfully Submitted
X 
Mr. Kwasi McKinney ([redacted])
[redacted] Unit

Arkansas
State Claims Commission

KWASI MCKINNEY

CLAIMANT

MAR 24 2023

V

CLAIM NO. 200909

RECEIVED

ARKANSAS DIVISION OF
CORRECTION

RESPONDENT

CLAIMANT'S MOTION TO PROCEED TO A SCHEDULED HEARING
FOR DAMAGES

Now, before The Arkansas State Claims Commission, comes the Claimant, Kwasi McKinney (ADC [REDACTED]), pro se, with his motion to proceed to a scheduled hearing. The Claimant states the following:

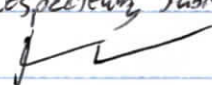
1. By the submission of the Claimant's pleading detailing the assessment of the damages the Claimant feels entitled to, the Claimant requests that this honorable commission proceed forward with the conclusion of his claim and schedule a hearing in order to award the Claimant all fair and proper relief.

WHEREFORE, the Claimant, Kwasi McKinney (ADC 137065) prays that this Commission grant this motion, schedule a hearing and award the Claimant any and all entitled relief.

CERTIFICATE OF SERVICE

I, Kwasi McKinney (ADC 137065) hereby certify that a copy of the foregoing motion has been served on the Respondent via U.S. postage service to the following address:

Mr. Thomas Blums
ADC Attorney
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, AR 71602

Respectfully Submitted
X 

Kwasi McKinney ADC 137065
[REDACTED]


MAR 24 2023

RECEIVED

Mr. Thomas Burns,

Greetings my name is Kwasi McKinney (AOC [REDACTED]), I am currently housed at The [REDACTED]. I am the claimant in Claim No. 200909 and I am writing you in order to inform you that I am willing to negotiate a settlement agreement in this claim that is agreeable and fair to both parties. I have submitted an assessment of the damages I suffered to the claims commission and as you can see the main issue was and is the fact that the loss of my property specifically my legal materials caused irreparable damage in the sense that I was unable to properly litigate my criminal appeal and as a result am procedurally barred in some instances which will make it ~~very~~ ^{extremely} difficult to obtain my freedom. With that said I am willing to negotiate a settlement for this claim. This is in no way an attempt to circumvent the commission's process because I am equally willing to proceed to a hearing and present my case to support the amount of damages sought. I am simply seeking to find common ground in order to bring this claim to a conclusion. You can contact me at the EAST ARKANSAS regional unit. Thank you for your time and I send this correspondence with absolute respect.

Sincerely

x 

Kwasi McKinney (AOC [REDACTED])
[REDACTED]

Mika Tucker

From: Thomas Burns (DOC)
Sent: Tuesday, March 28, 2023 12:49 PM
To: ASCC Pleadings
Cc: Leslie Browning (DOC)
Subject: Kwasi McKinney v ADC 200909
Attachments: 3577_001.pdf

Response to assessment

Thomas Burns
General Counsel
Arkansas Department of Corrections
Division of Correction
6814 Princeton Pike
Pine Bluff Arkansas 71602
Phone: (870) 267-6845
Fax: (870) 267-6373
Cell: (870) 515-0918
thomas.burns@arkansas.gov

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI McKINNEY (ADC [REDACTED])

CLAIMANT

V.

NO. 200909

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

ADC RESPONSE TO CLAIMANTS ASSESSMENT OF DAMAGES

Respondent, Arkansas Department of Correction (ADC), for its reply, states:

1. The ADC denies each and every allegation contained in the Inmate's motion unless specifically admitted herein.
2. The inmate seeks \$14,500.00 claiming he was damaged by this amount.
3. The inmate states his trial transcripts cost \$5000.00. He delivers absolutely no proof of the costs.
4. The inmate states his law book cost \$4000.00. He delivers absolutely no proof.
5. The inmate claims \$3500.00 for punitive damages. The inmate does not get and the Commission cannot award punitive damages.
6. The inmate claims \$2000.00 for time and legal costs. This is not an award that the Commission can give and the inmate again offers zero proof of these damages.
7. Starting from October 2019, a month before the inmate alleged claim, he had one item of legal material. *See attached Ex A*
8. From that time, he has increased his legal materials. *Id.*
9. The inmate has failed to mitigate his damages.
10. This inmate is indigent and could receive trial materials free of cost by mitigation.

WHEREFORE, Respondent prays that the damages be denied; for their attorney's fees and costs; and all other just and proper relief to which they may be entitled.

Respectfully submitted,



Thomas Burns (02006)
Division of Correction
Legal Department
6814 Princeton Pike
Pine Bluff, AR 71602
(870) 267-6845 Office
(870) 267-6373 Facsimile
thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 28th day of March 2023, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Kwasi McKinney ([REDACTED])
[REDACTED]



Thomas Burns

ADC INMATE PERSONAL PROPERTY INVENTORY RECORD (Code: S=STORAGE K=KEEP IN POSSESSION I=ISSUED F=FEMALE M=MALE) F-841-1

Transfer K. H. K. on 48 off [redacted] Position [redacted] Medical [redacted] Court [redacted] Other [redacted]
 Inmate's Name K. H. K. on ADC [redacted] Sending Institution [redacted] Receiving Institution: [redacted]

ITEM (# allowed)	#REC/SEN	CODE	#RET'D	DESCRIPTION	ITEM	#REC/SENT	CODE	#RET'D	DESCRIPTION
ADA Compliance Item	1				Nail Clippers (1)	1			
All Books (10)	1				Personal Mail	1			
Bathrobe (F, 2)	1				Photos (5)	1			
Bowls	1	S			Radio (1)	1	S		
Bras/Panties (F-1 3 ea + 5)	1				Religious Material	1	K		MPH Green Bible
Comb (M, 1 1)	1				Religious Medal (1)	1			
Cup	1	S			Ring (1)	1			
Dentures (1)	1				Shoes w/rel (1)	1			
Depilatory preparation (1)	1				Shower Shoes (1)	1			
Ear buds/earphone (1)	1	S			Soap Dish	1	S		
Earplugs	1				Socks (1 3 + 2)	1	S		
Eyeglasses/Contacts (1)	1	S/K			Stockings	1			
Gloves (1)	1				Sweat Pants (1)	1	S		
Gym Shoes (1)	1	K		no return / return	Sweat Shirts (1)	1	S		
Hair Brush (1)	1				Toothbrush holder	1	S		
Laundry Bag (1 1 + 1)	1	K/S			Undershirts	1	S		
Legal Mail/Transcript	1				Undershorts (M, 1-2 3)	1	K		
Magazines (3 ea)	1	S			Watch-Wrist (1)	1	S		no beard trimmer
Expendable Items (All Hygiene items limited to 2 items of each type or one pack if sold in a pack. Possession is limited to maximum in a pack)									
Batteries (4)	1			MAX PACKS	Flex Pens	1			
Beauty Aid products	1	K			Food items	1	S		0.50 S
Denture adhesive (2)	1				Hair Dressing (2)	1	K		
Deodorant (2)	1	K			Shampoo (2)	1	K		
Envelopes (10)	1				Shaving Cream (2)	1			
Other (All Hygiene items limited to 2 items of each type or one pack if sold in a pack. Possession is limited to maximum in a pack)									
Pen/Marker	1	F			Key/Keychain	1	S		broken
Shoes	1	K			D. of [redacted]	1	K		
Willow	1	K							
State Issued Items									
Brogans-shoes (1 pr)	1				Razor-Safety (2)	1			
Pants (3 pr)	1				Shirts (3)	1			
Cap/Hat (1)	1	K			Soap	1	K		clean S
Canvas Shoes (M, 1)	1				Thermals (2 sets)	1	K		
ADC Hand Book	1				Bath Towel as needed	1	K		
Toothbrush (1)	1	K			Toothpaste (2)	1	K		1.50 S
Jacket/Coat (1)	1				Washcloth (1)	1	K		

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

Printed Name / Sign Name / Badge # of Official Receiving Property [redacted] Date 10/1/19 Location Stored K-15 Inmate's Signature & ADC# / Witness, if refuses [redacted] Date [redacted]

Printed Name / Sign Name / Badge # of Official Returning Property [redacted] Date [redacted] Location Stored [redacted] Inmate's Signature & ADC# / Witness, if refuses [redacted] Date [redacted]

Transfer # 48 off ADC# Punitive Medical Court Other Receiving Institution: Receiving Institution:

ITEM (# allowed)	#REC/SEN	CODE	#RETD	DESCRIPTION	ITEM	#REC/SENT	CODE	#RETD	DESCRIPTION
ADA Compliance Item					Nail Clippers (1)				
All Books (10)					Personal Mail				
Bathrobe (F. 2)					Photos (5)				
Bowls					Radio (1)				
Bras/Panties (F-1 3 ea + 5)					Religious Material				
Comb (M, I 1)					Religious Medal (1)				
Cup					Ring (1)				
Dentures (1)					Shoes wk rel (1)				
Depilatory preparation (1)					Shower Shoes (1)				
Ear buds/earphone (1)					Soap Dish				
Earplugs					Socks (1 3 + 2)				
Eyeglasses/Contacts (1)					Stockings				
Gloves (1)					Sweat Pants (1)				
Gym Shoes (1)					Sweat Shirts (1)				
Hair Brush (1)					Toothbrush holder				
Laundry Bag (1 1+1)					Undershirts				
Legal Mail/Transcript					Undershorts (M, I-2 + 3)				
Magazines (3 ea)					Watch-Wrist (1)				
Expandable Items (All Hygiene items limited to 2 items of each type or one pack if sold in a pack. Possession is limited to maximum in a pack)									
Batteries (4)					Flex Pens				
Beauty Aid products					Food Items				
Denture adhesive (2)					Hair Dressing (2)				
Deodorant (2)					Shampoo (2)				
Envelopes (10)					Shaving Cream (2)				
Other (All Hygiene items limited to 2 items of each type or one pack if sold in a pack. Possession is limited to maximum in a pack)									
Magazines					Shampoo				
Shampoo					Shampoo				
Shampoo					Shampoo				
Shampoo					Shampoo				
State Issued Items									
Brogans-shoes (1 pr)					Razor-Safety (2)				
Pants (3 pr)					Shirts (3)				
Cap/Hat (1)					Soap				
Canvas Shoes (M, I)					Thermals (2 sets)				
ADC Hand Book					Bath Towel as needed				
Toothbrush (1)					Toothpaste (2)				
Jacket/Coat (1)					Washcloth (1)				

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

Printed Name / Sign Name / Badge # of Official Receiving Property: Printed Name / Sign Name / Badge # of Official Receiving Property Date: Date Location Stored: Location Stored

Inmate's Signature & ADC# / Witness, if refuses: Inmate's Signature & ADC# / Witness, if refuses Date: Date

Inmate's Signature & ADC# / Witness, if refuses: Inmate's Signature & ADC# / Witness, if refuses Date: Date

1-446

ADC INMATE PERSONAL PROPERTY INVENTORY RECORD (Code: S=STORAGE K=KEEP IN POSSESSION I=ISSUED F=FEMALE M=MALE) F-841-1

Transfer to: McKinney, K. 48 on 48 off 48 Punitive Max Receiving Institution Max Court Max Other Leo
 Inmate's Name: McKinney, K. ADX Max Medical Max Sending Institution: Max Receiving Institution Max

ITEM (# allowed)	#REC/SEN	CODE	#RET'D	DESCRIPTION	ITEM	#REC/SENT	CODE	#RET'D	DESCRIPTION
ADA Compliance Item	1	K			Nail Clippers (1)				
All Books (10)	1	C		Exceeds allowed limit	Personal Mail	4	S		books
Bathrobe (F, 2)					Photos (5)				
Bowls	3	S			Radio (1)				
Bras/Panties (F-1 3 ea + 5)	1	S			Religious Material				
Comb (M, 1)	1	S			Religious Medal (1)				
Cup	4	S			Ring (1)				
Dentures (1)					Shoes w/rel (1)				
Depilatory preparation (1)					Shower Shoes (1)				
Ear buds/earphone(1)	3	S		Three Earbuds/Headphones	Soap Dish	4	S		
Earplugs					Socks (1 3 + 2)	4	K		
Eyeglasses/Contacts (1)					Stockings				
Gloves (1)					Sweat Pants (1)				
Gym Shoes (1)	1	S		Leather Reebok	Sweat Shirts (1)				
Hair Brush (1)	2	K/S		Kept one/shave one	Toothbrush holder	1	S		
Laundry Bag (1 1 + 1)	1	S			Undershirts	3	S		
Legal Mail/Transcript	1	K		books	Undershorts (M, 1-2 + 3)	4	K		
Magazines (3 ea)	1	C		Exceeds limit	Watch-Wrist (1)				

Expendable Items (All Hygiene items limited to 2 items of each type or one pack if sold in a pack. Possession is limited to maximum in a pack)

Batteries (4)	3	S		AA	Flex Pens				
Beauty Aid products					Food items	5	S		
Denture adhesive (2)					Hair Dressing (2)				
Deodorant (2)	2	K/S		Two kept/one shave one	Shampoo (2)	1	K		
Envelopes (10)					Shaving Cream (2)				

Other (All Hygiene items limited to 2 items of each type or one pack if sold in a pack. Possession is limited to maximum in a pack)

ICY Hot	2	K/S		Kept one/shave one					
Board Games	1	S		Dominoes/Chees					

State Issued Items

Brogans-shoes (1 pr)					Razor-Safety (2)				
Pants (3 pr)					Shirts (3)				
Cap/Hat (1)					Soap	3	K		Shared the rest
Canvas Shoes (M, 1)					Thermals (2 sets)				
ADC Hand Book					Bath Towel as needed	3	K		
Toothbrush (1)	5	K			Toothpaste (2)	3	K		
Trucker/Coat					Washcloth (1)	3	K		

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

Printed Name / Sign Name: McKinney, K. Badge # of Official Receiving Property: 41117974 Date: 9-23-22
 Prisoner's Signature: [Signature] Inmate's Signature & ADC# / Witness, if refuses: [Signature] 9715 Date: 9-23-22
 Prisoner's Signature / Sign Name: [Signature] Badge # of Official Returning Property: 41117974 Date: 9-23-22
 Prisoner's Signature / Sign Name: [Signature] Badge # of Official Receiving Property: 41117974 Date: 9-23-22
 Prisoner's Signature / Sign Name: [Signature] Badge # of Official Returning Property: 41117974 Date: 9-23-22

ADC INMATE PERSONAL PROPERTY INVENTORY RECORD (Code: S=STORAGE K=KEEP IN POSSESSION I=ISSUED F=FEMALE M=MALE) F-841-1

Transfer 4897 48 off Inmate's Name: K. McKinney ADC # [redacted] Medical [redacted] Court [redacted] Other [redacted]
 Receiving Institution: [redacted]

ITEM (# allowed)	#REC/SEN	CODE	#RET'D	DESCRIPTION	ITEM	#REC/SENT	CODE	#RET'D	DESCRIPTION
ADA Compliance Item					Nail Clippers (1)				
All Books (10)					Personal Mail	two	S		books
Bathrobe (F, 2)					Photos (5)				
Bowls					Radio (1)	two	S		Sony, charcoal C
Bras/Panties (F-1 3 ea + 5)					Religious Material				
Comb (M, I 1)	one	K			Religious Medal (1)				
Cup	one	C			Ring (1)				
Dentures (1)					Shoes wk rel (1)				
Depilatory preparation (1)					Shower Shoes (1)	one	K		
Ear buds/earplugs (1)	one	S	two	S	Soap Dish	two	K		
Earplugs					Socks (1 3 + 2)	two	K		
Eyeglasses/Contacts (1)					Stockings				
Gloves (1)					Sweat Pants (1)				
Gym Shoes (1)	one	C		backpack	Sweat Shirts (1)				
Hair Brush (1)					Toothbrush holder	one	S		
Laundry Bag (1 + 1)					Undershirts	six	S		
Legal Mail/Transcript	three	K	two	S	Undershorts (M, I-2 + 3)	four	K		
Magazines (3 ea)	six	C		various ADC	Watch-Wrist (1)	one	K		Black
Expendable Items (All Hygiene items limited to 2 items of each type or one pack if sold in a pack. Possession is limited to maximum in a pack)									
Batteries (4)	two	bk			Flex Pens				
Beauty Aid products					Food items				
Denture adhesive (2)					Hair Dressing (2)				
Deodorant (2)	two	K	one	S	Shampoo (2)				
Envelopes (10)					Shaving Cream (2)				
Other (All Hygiene items limited to 2 items of each type or one pack if sold in a pack. Possession is limited to maximum in a pack)									
inmate	one	K			icy hot	one	K		
missy	one	S			legal forms	one	K		book
attended watch	one	C							
State Issued Items									
Brogans-shoes (1 pr)					Razor-Safety (2)				
Pants (3 pr)					Shirts (3)				
Cap/Hat (1)					Soap	one	K		duffy C
Canvas Shoes (M, I)					Thermals (2 sets)				
ADC Hand Book					Bath Towel as needed	six	K		
Toothbrush (1)	one	K			Toothpaste (2)	two	K		three S
Jacket/Coat (1)					Washcloth (1)	five	K		

Property that all my property is listed herein and disposition of all property is correct. Also, I do not have in my possession any legal materials belonging to any other inmate.
 Date: 1/22/20 Location: 1008
 Printed Name / Sign Name / Badge # of Official Receiving Property: [Signature] Date: _____
 Inmate's Signature & ADC# / Witness, if refuses: _____ Date: _____

Printed Name / Sign Name Badge # of Official Returning Property _____ Date _____
 Inmate's Signature & ADC# / Witness, if refuses _____ Date _____

Transfer 48 off
 Inmate's Name K. Acknow AD # [REDACTED]
 Non-Expendable Items

Court _____
 Receiving Institution: _____
 Other _____

ITEM (# allowed)	#REC/SENT	CODE	#RETD	DESCRIPTION	ITEM	#REC/SENT	CODE	#RETD	DESCRIPTION
ADA Compliance Item					Jail Clippers (1)				
All Books (10)					Personal Mail	two	S		books
Bathrobe (F, 2)					Photos (5)				
Bowls					Radio (1)	two	S		Sony, clear case, C
Bras/Panties (F-1 3 ea + 5)					Religious Material				
Comb (M, I 1)	one	K			Religious Medal (1)				
Cup	two	K			Ring (1)				
Dentures (1)					Shoes wk rel (1)				
Depilatory preparation (1)					Shower Shoes (1)	one	K		
Ear buds/earplugs (1)	one	S	two	S	Soap Dish	four	K		
Earplugs					Socks (1 3 + 2)	two	K		
Eyeglasses/Contacts (1)					Stockings				
Gloves (1)					Sweat Pants (1)				
Gym Shoes (1)	one	C		notebook	Sweat Shirts (1)				
Hair Brush (1)					toothbrush holder	one	S		
Laundry Bag (1 + 1)					Undershirts	SIX	S		
Legal Mail/Transcript	three	K	two	S	Undershorts (M, I-2 + 3)	five	K		
Magazines (3 ea)	six	C		WYOMING ABC	Watch-Wrist (1)	one	K		Black
Expendable Items (All Hygiene items limited to 2 items of each type or one pack if sold in a pack. Possession is limited to maximum in a pack)									
Batteries (4)	two	AK			Flex Pens				
Beauty Aid products					Food items				
Denture adhesive (2)					Hair Dressing (2)				
Deodorant (2)	two	K	one	S	Shampoo (2)				
Envelopes (10)					Shaving Cream (2)				
Other (All Hygiene items limited to 2 items of each type or one pack if sold in a pack. Possession is limited to maximum in a pack)									
Alabama	one	K			they not	one	K		
Alabama	one	K			legal terms	one	K		books
altered watch	one	C							
State Issued Items									
Brogans-shoes (1 pr)					Razor-Safety (2)				
Pants (3 pr)					Shirts (3)				
Cap/Hat (1)					Soap	two	K		two by C
Canvas Shoes (M, I)					Thermals (2 sets)				
ADC Hand Book					Bath Towel as needed				
Toothbrush (1)	two	K			Toothpaste (2)	two	K		three S
Jacket/Coat (1)					Washcloth (1)	five	K		

I hereby certify that all my property is listed herein and disposition of all property returned in this inventory is correct. Also, I do not have in my possession any level materials belonging to any other inmate.

Printed Name / Sign Name / Badge # of Official Receiving Property: W. Smith Date: 11/29/21
 Inmate's Signature & ADC#: [REDACTED] Date: 12-23
 Inmate's Signature & ADC#: [REDACTED] Date: 12-23

Mika Tucker

From: Thomas Burns (DOC)
Sent: Monday, September 18, 2023 8:18 AM
To: Moses Jackson (DOC)
Cc: Geneva Jones (DOC); Tyrone Allison (DOC); ASCC Pleadings; Mika Tucker
Subject: Claims Commission Hearing 9/22/2023
Attachments: Brooks v. ADC -- 220455 and 220981 -- hearing ltr (motion).pdf; Todd v. ADC -- 221393 -- hearing ltr.pdf; Thompson v. ADC -- 220857 -- hearing ltr (motion).pdf; McKinney v. ADC -- 200909 -- hearing ltr (damages portion of claim).pdf; Woodard v. ADC -- 221169 -- hearing ltr (CI's request and pending motions).pdf; Hoggard v. ADC -- 220385 -- hearing ltr.pdf

The following inmates have hearing beginning at 9am on Friday. Please have online and ready by 9am. I have attached the notices and zoom instructions (all the zoom will be the same.)

Billy Brooks (██████████)
Michael Todd (██████████)
Clifton Thompson (██████████)
Kwasi McKinney (██████████)
Roy Hoggard (██████████)

Thank you,
-TB



THOMAS BURNS
PENITENTIARY WARDEN, STATE OF ARKANSAS
Arkansas Department of Corrections
2445 Princeton Pike
Fayetteville, Arkansas 72703
Phone: (479) 247-6241 (Arkland) (479) 247-6242 (Arkland)
(479) 444-1000 (Arkland)
Thomas.Burns@adoc.state.ar.gov

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Mika Tucker

From: Misty Scott on behalf of ASCC Pleadings
Sent: Monday, October 23, 2023 9:32 AM
To: Thomas Burns (DOC)
Cc: ASCC Pleadings; Mika Tucker
Subject: ORDER: Kwasi McKinney v. ADC, Claim No. 200909
Attachments: Kwasi McKinney v. ADC3-2.pdf; Kwasi McKinney-Order5.pdf

Thomas:

Please see attached. Contact Mika Tucker with any questions.

Thank you,

Misty

Misty Scott
Arkansas State Claims Commission

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

October 23, 2023

Mr. Kwasi McKinney (ADC [REDACTED])
[REDACTED]

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602-9411

(via email)

Re: ***Kwasi McKinney v. Arkansas Division of Correction***
Claim No. 200909

Dear Mr. McKinney and Mr. Burns:

Enclosed please find an Order entered on October 20, 2023, by the Arkansas State Claims Commission. If you have any questions, please do not hesitate to contact my office.

Sincerely,

Mika Tucker

ES: msscott

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY (ADC [REDACTED])

CLAIMANT

V.

CLAIM NO. 200909

**ARKANSAS DIVISION OF
CORRECTION**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Commission”) is a claim filed by Kwasi McKinney (the “Claimant”) against the Arkansas Division of Correction (the “Respondent”). At the hearing on damages on September 22, 2023, Claimant proceeded *pro se*, and Thomas Burns appeared on behalf of Respondent. Based upon a review of the pleadings and filings, as well as the argument of the parties and the law of the State of Arkansas, the Commission hereby finds as follows:

1. Claimant filed his claim on March 4, 2020, seeking damages for lost property.
2. Respondent filed a motion to dismiss, which was denied by the Commission on October 20, 2020. As part of that order denying the motion, the parties were instructed to begin discovery.
3. During discovery, the Commission entered an order denying Respondent’s motion to deem admitted requests for admission propounded to Claimant as well as Claimant’s motion for summary judgment. The Commission also entered an order denying Claimant’s motion for injunction as well as Claimant’s motion for sanctions related to Respondent’s alleged failure to respond to the requests for admission and requests for production propounded by Claimant.

4. A hearing on the claim was held on October 13, 2022. After the hearing, the Commission entered an amended order¹ on January 19, 2023, finding that there was sufficient evidence of negligence on the part of Respondent to warrant an award in Claimant's favor, but that Claimant was unable to present detailed testimony related to his damages because his legal materials were taken from him prior to the hearing. The order indicated that the Commission would provide Claimant with a copy of the claim file and would set a hearing to determine the amount of damages to be awarded.

5. At the hearing on damages, Claimant testified that he was seeking \$13,155.29 in damages. Claimant testified that \$3,155.29 was the value of the property that was lost. Claimant testified that he was asking for another \$10,000.00 for "emotional distress, mental anguish and pain and suffering" because he has a very important criminal case he is fighting. Claimant testified that he had "a hundred and fifty-four years" for a conviction where the drugs at issue were not his. Claimant testified that he was innocent in this case and that all the legal documents he had from 2016 to 2019 were lost. Claimant testified that the loss of trial transcripts, remand hearing transcripts and crime lab reports, which took him three years to obtain, has caused him "a lot of stress." Claimant testified that he has been trying to get the crime lab reports for four years since Respondent lost his property. Claimant testified that he lost an affidavit from the person who the drugs belonged to and that this made a court filing untimely. Claimant testified that before his property was lost, he was "getting good feedback on his appeals" and, after Respondent took his books and case files, he did not have "the knowledge." Claimant testified that he does not have correspondence from his attorneys. Claimant stated that his family has supported him and gotten him this far, but "these folks" took his property and "messed [him] around." Upon a question from

¹ The Commission's January 19, 2023, order also denied Claimant's motion for summary judgment, finding that the motion was untimely pursuant to the hearing letter.

a commissioner related to whether Claimant was physical injured, Claimant testified that he was injured because all of his petitions and appeals were denied. Upon a question from a commissioner, Claimant testified that the costs of his trial transcripts were \$2,033.22 and \$315.00. Upon a question from a commissioner, Claimant testified the approximate cost of his court rule books, law dictionary, law journal and MP4 content was in his claim form. Claimant testified that his main concern was his legal materials but he had about \$400.00 worth of other items that were lost. The chair commissioner noted that he did not see the approximate cost of the legal items in Claimant's claim form. Upon a question from a commissioner, Claimant testified that he did not have the receipts for his legal materials because they were lost with his property. Claimant testified that he remembered how much these things cost because he still had the catalogues that he used to order his legal books from. The chair commissioner noted that Claimant had indicated that he was seeking \$4,000 for legal books and materials but that Claimant indicated that the amount included Claimant's alleged value of his emotional distress. Claimant testified that the "Arkansas Court Rule Volume I" price was \$165, the Black's law dictionary price was \$149, the "Arkansas Court Rule Volume II" price was \$126.00, the "Prison Legal Guide: Post-Conviction" price was \$159.89, the "Federal Rules of Criminal Procedure" price was \$49.95, the prison litigation manual price was \$54.95, "pay the cite" book price was \$49.95, the "loophole" price was \$6.95, the "Tools of Argument" price was \$12.50, the "Jail House Lawyer Manual" price was \$16.95, and the "How to Sue Your Deadbeat Attorney" price was \$15.95. Claimant testified the total cost of his books and his transcripts was \$3,155.29.

6. On cross-examination, Claimant testified that he had a private attorney and did not have a public defender when he went to trial. Claimant testified that he did not have a public defender on his first direct appeal and the court appointed him an attorney on his second direct

appeal. Claimant testified that his “third appeal attorney” withdrew and “they” gave him another attorney. Claimant testified that he did not have an attorney at the “time all of his property got damaged.” Claimant testified that he paid for his transcripts. Respondent presented the “pink copy of Claimant’s [F-]841 [form]” as an exhibit, Claimant testified that it “looked like the one [he] had.” Respondent then presented “the white copy [of the F-841 form] that [Respondent] keeps” as an exhibit. Claimant testified that he did not get all the property back and that he signed the form “because she forced [him] to sign for it.” Claimant testified “you have to sign for [the property] before you even get it so [he] didn’t know what was in the property bag before [he] signed for it.” Claimant testified that he would have “gotten nothing” if he did not “sign for it.”

7. Claimant testified that the property form presented by Respondent showed he had “zero mail.” Claimant presented envelopes he testified “said April 2018; March 20, 2018... June ’18.” Claimant testified that these three pieces of mail show that a sanitation lady brought him his mail after cleaning his cell and that “the confiscation form is bogus.” Claimant asked, “if [he] has mail in [his] cell from 2016, 2017 [and] 2018, then why is it not documented on the confiscation form?” Claimant testified that he was winning his case until Respondent lost his property.

8. Respondent argued that Claimant has the burden of proving his damages beyond speculation and that proof of damages must be certain. Respondent argued that Claimant had no receipts and nothing showing what his damages are. Respondent argued that “it is all pure speculation.” Respondent argued that Claimant could have gotten book receipts off EOMIS and that he has not done that. Respondent argued that Claimant provided only conjecture.

9. Claimant argued that inmates cannot write to Respondent and ask for certain documents. Claimant argued that Respondent could have pulled records from EOMIS to prove that

he was “lying” about the prices and that Respondent could not disprove the amount of his trial transcripts.

10. The Commission finds that Claimant’s testimony was credible and unrefuted. The Commission further finds that Claimant’s testimony related to his memory of the costs of the transcripts and his testimony regarding the specific book prices listed in legal materials catalogue was not speculative.

11. The Commission notes that Claimant seeks damages for pain and suffering and mental anguish, as well as actual damages. However, pain and suffering and mental anguish damages are not recoverable in negligence actions where a claimant has not suffered physical injury. *See Wright v. Husband*, 193 Ark. 347, 99 S.W.2d 583, 585 (1936).

12. For these reasons and for the reasons set forth in the Commission’s January 19, 2023, order, the Commission AWARDs Claimant \$3,155.29 and directs the Commission clerk to issue a voucher in payment thereof.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, Chair



ARKANSAS STATE CLAIMS COMMISSION
Sylvester Smith

DATE: October 20, 2023

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

TO: MS. MIKA TUCKER
FROM: MR. KWASI MCKINNEY
RE: CLAIM NO. 200-909
DATE: 10/30/23

Arkansas
State Claims Commission
NOV 13 2023
RECEIVED

Dear Ms. Tucker,

I recently received a correspondence from your office and/or the State Claims Commission informing me of the findings and the details thereof of a recent hearing conducted on behalf of a previous complaint that I filed. Based upon the results of the aforementioned proceedings, the Claims Commission found reason to determine that I be awarded damages in that regard due to the Respondent's negligence in losing my personal property. However, I would like to inquire about a few issues surrounding this subject matter. In reference to the payment of the damages awarded, in the event that I should choose to want to have the check mailed or deposited to my wife(s) account or P.O. BOX, I would like to know exactly what steps to initiate in order to properly arrange this process.

Also, dating back to mid-January I was determined to be the prevailing party 363

in this particular suit/claim and according to the most recent hearing, which was on or around mid-September, the amount of damages was determined and approximated therein. My question is, exactly when (date) does the Respondent's grace period actually expire and is there an exact date that has been set that I can expect to receive the actual check for the awarded damages?

Lastly, I have been informed that there is a handbook of rules and regulations that governs the proceedings of the State Claims Commission and if possible, I would like to know would you be so kind + considerate to provide me with a copy of said handbook or inform me of how I can acquire my own personal copy to become better informed of the aforementioned proceedings.

Once again, I greatly appreciate your assistance and willingness to serve in your honorable domain and office. Please feel free to correspond at your earliest convenience and hope to hear from your office soon. May God bless you + your loved ones in abundance

Respectfully Submitted,
Mr. Kaysi McKinney
364

ARKANSAS STATE CLAIMS COMMISSION

(501)682-1619
FAX (501)682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

November 15, 2023

Kwasi McKinney (ADC [REDACTED])
[REDACTED]
[REDACTED]

RE: *Kwasi McKinney (ADC [REDACTED] v. Arkansas Division of Correction*
Claim No. 200909

Dear Mr. McKinney,

An order was issued by the Arkansas State Claims Commission on October 20, 2023. Unless a notice of appeal or motion for reconsideration is filed, at the end of the 40-day period provided for in Ark. Code Ann. § 19-10-211, a check will be issued and mailed to Inmate Banking to be deposited in your inmate account. Both parties are copied on a letter transmitting the check to Inmate Banking.

Please be advised that you should be able to obtain a copy of the Commission rules from your facility's library.

Sincerely,

Kathryn Irby

ES: sjhyche

Mika Tucker

From: Thomas Burns (DOC)
Sent: Tuesday, November 21, 2023 11:02 AM
To: ASCC Pleadings
Subject: Kwasi McKinney v ADC 200909
Attachments: 1876_001.pdf

Motion Reconsideration

Thank you,
-TB



THOMAS BURNS
DEPUTY CHIEF OF POLICE, DEPARTMENT OF CORRECTIONS
Arkansas Department of Corrections
844 Prisons Plz
Ft. Smith, Arkansas 72534
Phone: (501) 227-0000 (ext. 2000) (501) 227-0000
Fax: (501) 227-0000
Email: tburns@adoc.state.ar.us

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI McKINNEY ([REDACTED])

CLAIMANT

v

NO. 200909

**ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTION**

RESPONDENT

MOTION FOR RECONSIDERATION

Comes Now the Respondent, Arkansas Department of Corrections (ADC), by Thomas Burns, and for their Motion for Reconsideration, states:

1. The Commission issued an Order October 20, 2023, awarding the inmate \$3,155.29 in damages. *See attached Ex A*
2. The inmate put on absolutely zero (0) evidence, not even a scintilla of damages. The inmate just claimed “the cost of his trial transcripts were \$2033.22 and \$315.00”. “Arkansas Court Rule Volume I” price was \$165, the Black’s law dictionary price was \$149, the “Arkansas Court Rule Volume II” price was \$126.00, the “Prison Legal Guide: Post-Conviction” price was \$159.89, the “Federal Rules of Criminal Procedure” price was \$49.95, the prison litigation manual price was \$54.95, “pay the cite” book price was \$49.95, the “loophole” price was \$6.95, the “Tools of Argument” price was \$12.50, the “Jail House Lawyer Manual” price was \$16.95, and the “How to Sue Your Deadbeat Attorney” price was \$15.95. Claimant testified the total cost of his books and his transcripts was \$3,155.29.” *Id at paragraph 5*. The inmate did not have any receipts, nor did he ask for copies of receipts in the discovery process. Because there are none.
3. The Commission did not move for damages in the original hearing because he claimed he did not have what he needed. “but that Claimant was unable to present detailed testimony related to his damages because his legal materials were taken from

him prior to the hearing. The order indicated that the Commission would provide Claimant with a copy of the claim file and would set a hearing to determine the amount of damages to be awarded.” *Id at paragraph 4.*

3. The inmate had nine (9) months to gather receipts from Court reporters, lawyers, book stores, ect. The inmate did nothing, not even further discovery. The inmate knows who his lawyers were, what Courts he was on, and stated he had the catalogs for the books. He could have received receipts or copies for any of these over a nine (9) month period.

4. The inmate claimed her did not have transcripts and could not file his appellate cases. The inmate has filed five (5) appellate cases. All five he filed a transcript. *See attached Ex B.* As an indigent inmate he can get those at State expense. Free.

5. The inmate stated he could not file a writ of error corum nobis. He filed such a writ in case number CR-18-546. Well before this matter started. *Id at page 9-13.*

6. The inmate stated he could not file his Rule 37 petition, but again that was filed in case number 14-CR-16-35, the case he received one hundred fifty four (154) years, He Rule 37 was denied. *See attached Ex C.*

7. The inmate claimed he did not have receipts for his items and that the ADC had those receipts in eOmis. The burden does not shift to the ADC its on the inmate to provide those. He did not provide those or ask for those because they do not exist.

8. Inmate banking at not time shows a reciot or an amount for anything the inmate claims. Not \$2033.22, \$315.00, 4165, \$149, \$126, \$159.89, \$49.95, \$54.95, \$49.95, \$6.95, \$12.50, \$16.95, or \$15.95. *See attached Ex D.*

9. The only two (2) checks written to outside vendors on the inmate account are one to the Arkansas Supreme Court for \$9.00 and one to Books-N-Things for \$6.00.

See attached Ex E.

10. When being questioned about receipts and costs by the ADC the inmate became argumentative and refused to answer. In fact the inmates response was "It doesn't matter how I paid for it". Somehow though the Commission found the inmate credible, despite any proof whatsoever, his failed to answer, and shifted the burden to the ADC because the inmate said eOmis has his receipts.

11. The party claiming damages has the burden of proving those damages beyond speculation. *Minerva Enterprises v. Howlett*, 308 Ark. 291, 824 S.W. 2d 377 (1992). Regarding proof of damages, the burden of proof is on the party claiming damages, and such proof must consist of facts, not speculation. *Marine Servs. Unlimited, Inc. v. Rakes*, 323 Ark. 757, 918 S.W.2d 132 (1996).

12. The amount of damages a plaintiff is entitled to is a question of fact. *Quality Truck Equipment Co. v. Layman*, 51 Ark. App. 195, 912 S.W.2d 18 (1995). The burden of proof regarding damages is on the party claiming them. *Grand State Mktg. v. Eastern Poultry Distrib., Inc.*, 63 Ark. App. 123, 975 S.W.2d 439 (1998). Exactness of proof of damages is not required and if it is reasonably certain that some loss occurred, it is enough that damages can be stated only approximately. *Morton v. Park View Apartments*, 315 Ark. 400, 868 S.W.2d 448 (1993); *Employers Ins. of Wausau v. Didion Mid-South Corp.*, 65 Ark. App. 201, 987 S.W.2d 745 (1999). However, a plaintiff's proof of damages must be certain enough to allow findings from established facts, not from speculation or conjecture. *Riffle v. United Gen. Title Ins. Co.*, *supra*.

13. The inmates failure to provide receipts or answer how he paid for the items can only allow for speculation or conjecture. The new proof offered by the ADC shows the inmate is not credible and has no damages. Maybe \$6.00 for the receipt to Boos-N-Things as that is close to \$6.95 book the “loophole” *Ex A at paragraph 5*.

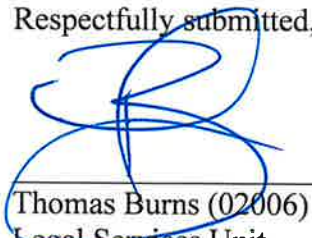
14. Arkansas State Claims Commission Rule 7.1 Motions for Reconsideration “will only be entertained if they set forth new or additional evidence which was not previously available.” As there was burden shifting.

15. This motion puts forth new and additional evidence the was not available at the hearing. The inmate banking account and the inmates appellate cases.

16. This motion presents case law and evidence that the Claims Commission should reverse their previous ruling and dismiss the claim.

WHEREFORE, the Respondent prays that the Commission reconsider the order of October 20, 2023; that this Commission set aside the award of damages for lack of evidence; for their attorney fees and costs; and for all other just and proper relief to which they may be entitled.

Respectfully submitted,




Thomas Burns (02006)
Legal Services Unit
Division of Correction
6814 Princeton Pike
Pine Bluff, AR 71602
(870) 267-6845 Office
(870) 267-6373 Facsimile
thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of the above pleading has been served this 21st day of November 2023, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Kwasi McKinney ([REDACTED])
[REDACTED]



Thomas Burns

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY (ADC [REDACTED])

CLAIMANT

V.

CLAIM NO. 200909

**ARKANSAS DIVISION OF
CORRECTION**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Commission”) is a claim filed by Kwasi McKinney (the “Claimant”) against the Arkansas Division of Correction (the “Respondent”). At the hearing on damages on September 22, 2023, Claimant proceeded *pro se*, and Thomas Burns appeared on behalf of Respondent. Based upon a review of the pleadings and filings, as well as the argument of the parties and the law of the State of Arkansas, the Commission hereby finds as follows:

1. Claimant filed his claim on March 4, 2020, seeking damages for lost property.
2. Respondent filed a motion to dismiss, which was denied by the Commission on October 20, 2020. As part of that order denying the motion, the parties were instructed to begin discovery.
3. During discovery, the Commission entered an order denying Respondent’s motion to deem admitted requests for admission propounded to Claimant as well as Claimant’s motion for summary judgment. The Commission also entered an order denying Claimant’s motion for injunction as well as Claimant’s motion for sanctions related to Respondent’s alleged failure to respond to the requests for admission and requests for production propounded by Claimant.

4. A hearing on the claim was held on October 13, 2022. After the hearing, the Commission entered an amended order¹ on January 19, 2023, finding that there was sufficient evidence of negligence on the part of Respondent to warrant an award in Claimant's favor, but that Claimant was unable to present detailed testimony related to his damages because his legal materials were taken from him prior to the hearing. The order indicated that the Commission would provide Claimant with a copy of the claim file and would set a hearing to determine the amount of damages to be awarded.

5. At the hearing on damages, Claimant testified that he was seeking \$13,155.29 in damages. Claimant testified that \$3,155.29 was the value of the property that was lost. Claimant testified that he was asking for another \$10,000.00 for "emotional distress, mental anguish and pain and suffering" because he has a very important criminal case he is fighting. Claimant testified that he had "a hundred and fifty-four years" for a conviction where the drugs at issue were not his. Claimant testified that he was innocent in this case and that all the legal documents he had from 2016 to 2019 were lost. Claimant testified that the loss of trial transcripts, remand hearing transcripts and crime lab reports, which took him three years to obtain, has caused him "a lot of stress." Claimant testified that he has been trying to get the crime lab reports for four years since Respondent lost his property. Claimant testified that he lost an affidavit from the person who the drugs belonged to and that this made a court filing untimely. Claimant testified that before his property was lost, he was "getting good feedback on his appeals" and, after Respondent took his books and case files, he did not have "the knowledge." Claimant testified that he does not have correspondence from his attorneys. Claimant stated that his family has supported him and gotten him this far, but "these folks" took his property and "messed [him] around." Upon a question from

¹ The Commission's January 19, 2023, order also denied Claimant's motion for summary judgment, finding that the motion was untimely pursuant to the hearing letter.

a commissioner related to whether Claimant was physical injured, Claimant testified that he was injured because all of his petitions and appeals were denied. Upon a question from a commissioner, Claimant testified that the costs of his trial transcripts were \$2,033.22 and \$315.00. Upon a question from a commissioner, Claimant testified the approximate cost of his court rule books, law dictionary, law journal and MP4 content was in his claim form. Claimant testified that his main concern was his legal materials but he had about \$400.00 worth of other items that were lost. The chair commissioner noted that he did not see the approximate cost of the legal items in Claimant's claim form. Upon a question from a commissioner, Claimant testified that he did not have the receipts for his legal materials because they were lost with his property. Claimant testified that he remembered how much these things cost because he still had the catalogues that he used to order his legal books from. The chair commissioner noted that Claimant had indicated that he was seeking \$4,000 for legal books and materials but that Claimant indicated that the amount included Claimant's alleged value of his emotional distress. Claimant testified that the "Arkansas Court Rule Volume I" price was \$165, the Black's law dictionary price was \$149, the "Arkansas Court Rule Volume II" price was \$126.00, the "Prison Legal Guide: Post-Conviction" price was \$159.89, the "Federal Rules of Criminal Procedure" price was \$49.95, the prison litigation manual price was \$54.95, "pay the cite" book price was \$49.95, the "loophole" price was \$6.95, the "Tools of Argument" price was \$12.50, the "Jail House Lawyer Manual" price was \$16.95, and the "How to Sue Your Deadbeat Attorney" price was \$15.95. Claimant testified the total cost of his books and his transcripts was \$3,155.29.

6. On cross-examination, Claimant testified that he had a private attorney and did not have a public defender when he went to trial. Claimant testified that he did not have a public defender on his first direct appeal and the court appointed him an attorney on his second direct

appeal. Claimant testified that his “third appeal attorney” withdrew and “they” gave him another attorney. Claimant testified that he did not have an attorney at the “time all of his property got damaged.” Claimant testified that he paid for his transcripts. Respondent presented the “pink copy of Claimant’s [F-]841 [form]” as an exhibit, Claimant testified that it “looked like the one [he] had.” Respondent then presented “the white copy [of the F-841 form] that [Respondent] keeps” as an exhibit. Claimant testified that he did not get all the property back and that he signed the form “because she forced [him] to sign for it.” Claimant testified “you have to sign for [the property] before you even get it so [he] didn’t know what was in the property bag before [he] signed for it.” Claimant testified that he would have “gotten nothing” if he did not “sign for it.”

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8. Respondent argued that Claimant has the burden of proving his damages beyond speculation and that proof of damages must be certain. Respondent argued that Claimant had no receipts and nothing showing what his damages are. Respondent argued that “it is all pure speculation.” Respondent argued that Claimant could have gotten book receipts off EOMIS and that he has not done that. Respondent argued that Claimant provided only conjecture.

9. Claimant argued that inmates cannot write to Respondent and ask for certain documents. Claimant argued that Respondent could have pulled records from EOMIS to prove that

he was “lying” about the prices and that Respondent could not disprove the amount of his trial transcripts.

10. The Commission finds that Claimant’s testimony was credible and unrefuted. The Commission further finds that Claimant’s testimony related to his memory of the costs of the transcripts and his testimony regarding the specific book prices listed in legal materials catalogue was not speculative.

11. The Commission notes that Claimant seeks damages for pain and suffering and mental anguish, as well as actual damages. However, pain and suffering and mental anguish damages are not recoverable in negligence actions where a claimant has not suffered physical injury. *See Wright v. Husband*, 193 Ark. 347, 99 S.W.2d 583, 585 (1936).

12. For these reasons and for the reasons set forth in the Commission’s January 19, 2023, order, the Commission AWARDS Claimant \$3,155.29 and directs the Commission clerk to issue a voucher in payment thereof.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, Chair



ARKANSAS STATE CLAIMS COMMISSION
Sylvester Smith

DATE: October 20, 2023

Notice(s) which may apply to your claim

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- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

ID	Names/Corporation	Case Description	Party Type	Filing Date	Judge
	KWASI MCKINNEY Aliases: ,MCKINNEY, KWASI ANDRADE	Case: <u>CR-22-193</u> KWASI MCKINNEY V STATE OF ARKANSAS Status: FINAL	PETITIONER	31-MAR-22	
	KWASI MCKINNEY Aliases: ,MCKINNEY, KWASI ANDRADE	Case: <u>CR-20-658</u> KWASI MCKINNEY V STATE OF ARKANSAS Status: FINAL	APPELLANT PRO SE	16-NOV-20	
	KWASI MCKINNEY Aliases: ,MCKINNEY, KWASI ANDRADE	Case: <u>CR-20-410</u> KWASI ANDRADE MCKINNEY V STATE OF ARKANSAS Status: FINAL	PETITIONER	23-JUN-20	
	KWASI MCKINNEY Aliases: ,MCKINNEY, KWASI ANDRADE	Case: <u>CR-18-546</u> KWASI ANDRADE MCKINNEY V STATE OF ARKANSAS Status: FINAL	APPELLANT	25-JUN-18	
	KWASI MCKINNEY Aliases: ,MCKINNEY, KWASI ANDRADE	Case: <u>CR-17-264</u> KWASI ANDRADE MCKINNEY V STATE OF ARKANSAS Status: FINAL	APPELLANT	03-APR-17	
	KWASI MCKINNEY Aliases: ,MCKINNEY, KWASI ANDRADE	Case: <u>14CR-16-210</u> STATE V KWASI ANDRADE MCKINNEY Status: CLOSED	DEFENDANT	14-NOV-16	, 13TH CIRCUIT DIVISION 5
	KWASI MCKINNEY Aliases: ,MCKINNEY	Case: <u>14CR-16-35</u> STATE	DEFENDANT	21-MAR-16	, 13TH CIRCUIT

EY, KWASI ANDRADE	V KWASI ANDRADE MCKINNEY Status: CLOS ED			DIVISIO N 5
[REDACTED] KWASI MCKINNEY	Case: <u>60CR-13-</u>			, HON. LEON JOHNSO
Aliases: ,MCKINN EY, KWASI ANDRADE	<u>152</u> STATE V KWASI MCKINNEY Status:	DEFENDANT	11-JAN- 13	N - 1ST DIVISIO N 6TH CIRCUIT
[REDACTED] KWASI MCKINNEY	Case: <u>14CR-09-</u>			, 13TH CIRCUIT
Aliases: ,MCKINN EY, KWASI ANDRADE	<u>140</u> STATE V KWASI ANDRADE MCKINNEY Status: CLOS ED	DEFENDANT	05-AUG- 09	DIVISIO N 5
[REDACTED] KWASI MCKINNEY	Case: <u>14CR-09-</u>			, 13TH CIRCUIT
Aliases: ,MCKINN EY, KWASI ANDRADE	<u>148</u> STATE V KWASI ANDRADE MCKINNEY Status: CLOS ED	DEFENDANT	05-AUG- 09	DIVISIO N 5
[REDACTED] KWASI MCKINNEY	Case: <u>14CR-05-</u>			, 13TH CIRCUIT
Aliases: ,MCKINN EY, KWASI ANDRADE	<u>185</u> STATE V KWASI ANDRADE MCKINNEY Status: CLOS ED	DEFENDANT	08-NOV- 05	DIVISIO N 1
[REDACTED] KWASI MCKINNEY	Case: <u>14CR-05-</u>			, 13TH CIRCUIT
Aliases: ,MCKINN EY, KWASI ANDRADE	<u>171</u> STATE V KWASI ANDRADE MCKINNEY Status: CLOS ED	DEFENDANT	24-OCT- 05	DIVISIO N 1



KWASI MCKINNEY	Case: <u>14CR-03-144</u> STATE V			
Aliases: ,MCKINNEY, KWASI ANDRADE	KWASI ANDRADE MCKINNEY	DEFENDANT	21-AUG-03	, 13TH CIRCUIT DIVISION 5
	Status: CLOSED			
KWASI MCKINNEY	Case: <u>14CR-02-25</u> STATE V KWASI			
Aliases: ,MCKINNEY, KWASI ANDRADE	ANDRADE MCKINNEY	DEFENDANT	31-JAN-02	, 13TH CIRCUIT DIVISION 5
	Status: CLOSED			
KWASI MCKINNEY	Case: <u>14CV-16-93</u> STATE OF ARKANSAS V			
Aliases: ,McKINNEY, KWASI A	KWASI MCKINNEY	DEFENDANT	22-JUN-16	, 13TH CIRCUIT DIVISION 6
	Status: CLOSED			
KWASI MCKINNEY	Case: <u>14CV-16-29</u> STATE OF ARKANSAS V			
Aliases: ,McKINNEY, KWASI A	KWASI A MCKINNEY	DEFENDANT	19-FEB-16	, 13TH CIRCUIT DIVISION 4
	Status: CLOSED			

KWASI MCKINNEY

Aliases: ,MCKINNEY, KWASI ANDRADE Case: CR-22-193 KWASI MCKINNEY V STATE OF ARKANSAS

Status:FINAL PETITIONER 31-MAR-22

KWASI MCKINNEY

Aliases: ,MCKINNEY, KWASI ANDRADE Case: CR-20-658 KWASI MCKINNEY V STATE OF ARKANSAS

Status:FINAL APPELLANT PRO SE 16-NOV-20

KWASI MCKINNEY

Aliases: ,MCKINNEY, KWASI ANDRADE Case: CR-20-410 KWASI ANDRADE MCKINNEY V STATE OF ARKANSAS

Status:FINAL PETITIONER 23-JUN-20

KWASI MCKINNEY

Aliases: ,MCKINNEY, KWASI ANDRADE Case: CR-18-546 KWASI ANDRADE MCKINNEY V STATE OF ARKANSAS

Status:FINAL APPELLANT 25-JUN-18

KWASI MCKINNEY

Aliases: ,MCKINNEY, KWASI ANDRADE Case: CR-17-264 KWASI ANDRADE MCKINNEY V STATE OF ARKANSAS

Status:FINAL APPELLANT 03-APR-17

KWASI MCKINNEY

Aliases: ,MCKINNEY, KWASI ANDRADE Case: 14CR-16-210 STATE V KWASI ANDRADE MCKINNEY

Status:CLOSED DEFENDANT 14-NOV-16 , 13TH CIRCUIT DIVISION 5

KWASI MCKINNEY

Aliases: ,MCKINNEY, KWASI ANDRADE Case: 14CR-16-35 STATE V KWASI ANDRADE MCKINNEY

Status:CLOSED DEFENDANT 21-MAR-16 , 13TH CIRCUIT DIVISION 5

KWASI MCKINNEY

Aliases: ,MCKINNEY, KWASI ANDRADE Case: 60CR-13-152 STATE V KWASI MCKINNEY

Status: DEFENDANT 11-JAN-13 , HON. LEON JOHNSON - 1ST DIVISION 6TH CIRCUIT

KWASI MCKINNEY

Aliases: ,MCKINNEY, KWASI ANDRADE Case: 14CR-09-140 STATE V KWASI ANDRADE MCKINNEY

Status:CLOSED DEFENDANT 05-AUG-09 , 13TH CIRCUIT DIVISION 5

KWASI MCKINNEY

Aliases: ,MCKINNEY, KWASI ANDRADE Case: 14CR-09-148 STATE V KWASI ANDRADE MCKINNEY

Status:CLOSED DEFENDANT 05-AUG-09 , 13TH CIRCUIT DIVISION 5

KWASI MCKINNEY

Aliases: ,MCKINNEY, KWASI ANDRADE Case: 14CR-05-185 STATE V KWASI ANDRADE MCKINNEY

Status:CLOSED DEFENDANT 08-NOV-05 , 13TH CIRCUIT DIVISION 1

KWASI MCKINNEY

Aliases: ,MCKINNEY, KWASI ANDRADE Case: 14CR-05-171 STATE V KWASI ANDRADE MCKINNEY

Status:CLOSED DEFENDANT 24-OCT-05 , 13TH CIRCUIT DIVISION 1

KWASI MCKINNEY

Aliases: ,MCKINNEY, KWASI ANDRADE Case: 14CR-03-144 STATE V KWASI ANDRADE MCKINNEY

Status:CLOSED DEFENDANT 21-AUG-03 , 13TH CIRCUIT DIVISION 5

KWASI MCKINNEY

Aliases: ,MCKINNEY, KWASI ANDRADE Case: 14CR-02-25 STATE V KWASI ANDRADE MCKINNEY

Status:CLOSED DEFENDANT 31-JAN-02 , 13TH CIRCUIT DIVISION 5

KWASI MCKINNEY

Aliases: ,MCKINNEY, KWASI A Case: 14CV-16-93 STATE OF ARKANSAS V KWASI MCKINNEY

Status:CLOSED DEFENDANT 22-JUN-16 , 13TH CIRCUIT DIVISION 6

KWASI MCKINNEY

Aliases: ,MCKINNEY, KWASI A Case: 14CV-16-29 STATE OF ARKANSAS V KWASI A MCKINNEY

Status:CLOSED DEFENDANT 19-FEB-16 , 13TH CIRCUIT DIVISION 4

Case ID: CR-17-264 - KWASI ANDRADE MCKINNEY V STATE OF ARKANSAS

Filing Date: Monday , April 03rd, 2017

Court: AR - STATE OF ARKANSAS

Location: CA - COURT OF APPEALS

Type: AF - APPELLATE FELONY

Status: FINAL - FINAL

Case Parties

Seq #	Assoc	End Date	Type	ID	Name
1			APPELLANT	[REDACTED]	MCKINNEY, KWASI ANDRADE
Aliases: none					
2			APPELLEE	[REDACTED]	STATE OF ARKANSAS
Aliases: none					
3			APPELLANT COUNSEL	[REDACTED]	ROLFE, LOTT
Aliases: IV, LOTT ROLFE					
4			APPELLEE COUNSEL	[REDACTED]	ATTORNEY GENERAL
Aliases: none					
10			WRITING JUDGE	[REDACTED]	LARRY D. VAUGHT, JUDGE
Aliases: none					
6			LOWER COURT JUDGE	[REDACTED]	TALLEY JR , DAVID W
Aliases: JR., DAVID W. TALLEY					

7 LOWER COURT CLERK [REDACTED] COLUMBIA COUNTY CIRCUIT COURT

Aliases: none

9 APPELLEE COUNSEL [REDACTED] JACKSON, ADAM DONNER

Aliases: none

5 APPELLEE COUNSEL [REDACTED] RAUPP, DAVID ROBERT

Aliases: none

MILESTONE DESCRIPTION	DUE DATE	CHANGED DUE DATE	FILING DATE
BRIEFING COMMENCED	04/03/2017	04/03/2017	
APPELLANT'S BRIEF	05/13/2017	08/11/2017	08/10/2017
APPELLEE'S BRIEF	09/09/2017	09/21/2017	09/18/2017
REPLY BRIEF	10/03/2017		

CR-18-546 - KWASI ANDRADE MCKINNEY V STATE OF ARKANSAS

Filing Date: Monday , June 25th, 2018

Court: AR - STATE OF ARKANSAS

Location: CA - COURT OF APPEALS

Type: AF - APPELLATE FELONY

Status: FINAL - FINAL

Case Parties

Seq #	Assoc	End Date	Type	ID	Name
1			APPELLANT		...EY, KWASI ANDRADE
Aliases: none					
2			APPELLEE		... OF ARKANSAS
Aliases: none					
4			APPELLEE COUN		... ATTORNEY GENERAL
Aliases: none					
6			LOWER COURT		... TALLEY JR , DAVID W
Aliases: JR., DAVID W. TALLEY					
7			LOWER COURT		... COLUMBIA COUNTY CIRCUIT COURT
Aliases: none					
14			APPELLEE COUN		... JOHNSON, DARNISA C EVANS
Aliases: JOHNSON, DARNISA EVANS					

15 APPELLANT COUNSEL [REDACTED] DAVIS, JASON ROBERT
 Aliases: none

17 WRITING JUDGE [REDACTED] ROBIN F. WYNNE, JUSTICE
 Aliases: WYNNE

12 APPELLEE COUNSEL [REDACTED] JACKSON, ADAM DONNER
 Aliases: none

BRIEFING COMMENCED 06/25/2018 06/25/2018

BRIEFING COMMENCED 06/25/2018 08/29/2018

APPELLANT'S BRIEF 10/08/2018 10/22/2018 10/22/2018

APPELLEE'S BRIEF 11/21/2018 12/21/2018 12/13/2018

REPLY BRIEF 12/28/2018 01/04/2019 01/04/2019

ORDER ADDENDUM 01/04/2019 02/27/2019

SUPPLEMENTAL ADDENDUM 03/06/2019 03/06/2019

Docket Entries

Filing Date	Description	Name	Monetary
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06/25/2018

03:28 PM RECORD LODGED

Entry: 1 volume; 137 pages. Volume contains a disc. Previous appeal has one volume record (CR-17-264)

Images No Images

CR-20-410 - KWASI ANDRADE MCKINNEY V STATE OF ARKANSAS

Filing Date: Tuesday , June 23rd, 2020

Court: AR - STATE OF ARKANSAS

Location: SC - SUPREME COURT

Type: WM - WRIT OF MANDAMUS - CR

Status: FINAL - FINAL

Case Parties

Seq #	Assoc	End Date	Type	ID	Name
1			PETITIONER	[REDACTED]	MCKINNEY, KWASI ANDRADE
Aliases: none					
2			RESPONDENT	[REDACTED]	STATE OF ARKANSAS
Aliases: none					
3			DEFENDANT/RESPONDENT ATTORNEY	[REDACTED]	ATTORNEY GENERAL
Aliases: none					
5			LOWER COURT JUDGE	[REDACTED]	TALLEY JR , DAVID W
Aliases: JR., DAVID W. TALLEY					
6			LOWER COURT CLERK	[REDACTED]	COLUMBIA COUNTY CIRCUIT COURT
Aliases: none					
4			DEFENDANT/RESPONDENT ATTORNEY	[REDACTED]	JOHNSON, DARNISA C
EVANS					
Aliases: JOHNSON, DARNISA EVANS					

Docket Entries

Filing Date	Description	Name	Monetary
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06/23/2020

09:24 AM PARTIAL RECORD LODGED

Entry: 1 volume; 14 pages.

Images No Images

06/23/2020

09:24 AM LOWER COURT INFORMATION

Entry: none.

Images No Images

06/23/2020

09:24 AM PRO SE PET FOR WRIT MANDAMUS MCKINNEY, KWASI ANDRADE

Entry: Petitioner's pro se petition for writ of mandamus.

Images PETITION

06/23/2020

11:50 AM LETTER TO APPELLANT

Entry: Acknowledging receipt and filing of pro se petition for writ of mandamus.

Images LETTER

08/27/2020

10:00 AM MOTION SUBMITTED MCKINNEY, KWASI ANDRADE

Entry: Petitioner's pro se petition for writ of mandamus.

Images No Images

09/10/2020

10:00 AM FORMAL ORDERS - SC MCKINNEY, KWASI ANDRADE

Entry: Petitioner's pro se petition for writ of mandamus is denied. Hart, J., would grant.

Images ORDER

FORMAL ORDER

STATE OF ARKANSAS,)
) SCT.
SUPREME COURT)

BE IT REMEMBERED, THAT A SESSION OF THE SUPREME COURT BEGUN AND HELD IN THE CITY OF LITTLE ROCK, ON JULY 21, 2022, AMONGST OTHERS WERE THE FOLLOWING PROCEEDINGS, TO-WIT:

SUPREME COURT CASE NO. CR-18-546

KWASI MCKINNEY PETITIONER

V. APPEAL FROM COLUMBIA COUNTY CIRCUIT COURT – 14CR-16-35

STATE OF ARKANSAS RESPONDENT

PETITIONER’S PRO SE FIFTH PETITION TO REINVEST JURISDICTION IN THE TRIAL COURT TO CONSIDER A PETITION FOR WRIT OF ERROR CORAM NOBIS IS DENIED.

IN TESTIMONY, THAT THE ABOVE IS A TRUE COPY OF THE ORDER OF SAID SUPREME COURT, RENDERED IN THE CASE HEREIN STATED, I, STACEY PECTOL, CLERK OF SAID SUPREME COURT, HEREUNTO SET MY HAND AND AFFIX THE SEAL OF SAID SUPREME COURT, AT MY OFFICE IN THE CITY OF LITTLE ROCK, THIS 21ST DAY OF JULY, 2022.



Stacey Pectol

CLERK

BY: _____
DEPUTY CLERK

ORIGINAL TO CLERK

CC: KWASI MCKINNEY
ADAM JACKSON, ASSISTANT ATTORNEY GENERAL
HON. DAVID W. TALLEY, JR., CIRCUIT JUDGE

CR-20-658 - KWASI MCKINNEY V STATE OF ARKANSAS

Filing Date: Monday , November 16th, 2020

Court: AR - STATE OF ARKANSAS

Location: CA - COURT OF APPEALS

Type: PV - POST CONVICTION APPEAL

Status: FINAL - FINAL

Case Parties

Seq #	Assoc	End Date	Type	ID	Name
1			APPELLANT PRO SE		MCKINNEY, KWASI ANDRADE
Aliases: none					
2			APPELLEE		STATE OF ARKANSAS
Aliases: none					
3			LOWER COURT JUDGE		TALLEY JR , DAVID W
Aliases: JR., DAVID W. TALLEY					
4			LOWER COURT CLERK		COLUMBIA COUNTY CIRCUIT COURT
Aliases: none					
6			APPELLEE COUNSEL		JOHNSON, DARNISA C EVANS
Aliases: JOHNSON, DARNISA EVANS					
7			WRITING JUDGE		LARRY D. VAUGHT, JUDGE
Aliases: none					
9			APPELLEE COUNSEL		EANES JR , DAVID L

Aliases: EANES, DAVID L

10 RECUSED JUDGE [REDACTED] BARTON F. VIRDEN, JUDGE

Aliases: none

5 APPELLEE COUNSEL [REDACTED] ATTORNEY GENERAL

Aliases: none

WRIT OF CERTIORARI TO COMP REC 12/09/2020 12/09/2020

WRIT RETURNED; COMP REC FILED 01/08/2021 12/17/2020

APPELLANT'S BRIEF 01/26/2021 01/08/2021

APPELLEE'S BRIEF 02/07/2021 02/14/2021 02/16/2021

REPLY BRIEF 03/03/2021 03/10/2021 03/08/2021

Docket Entries

Filing Date Description Name Monetary

11/16/2020

02:21 PM PARTIAL RECORD TENDERED

Entry: 1 volume; 22 pages. Previous records in CR-17-264 (1 vol) and CR-18-546 (1 vol) placed with CR-20-658 (1 vol).

11/16/2020

02:22 PM PRO SE MOT FOR RULE ON CLERK MCKINNEY, KWASI ANDRADE

Entry: Appellant's pro se motion to lodge the record.

Images MOTION

11/16/2020

02:22 PM LETTER TO APPELLANT

Entry: Acknowledging receipt and filing of pro se motion.

Images LETTER

11/16/2020

04:25 PM LOWER COURT INFORMATION

Entry: none.

Images No Images

12/02/2020

09:01 AM MOTION SUBMITTED MCKINNEY, KWASI ANDRADE

Entry: Appellant's pro se motion to lodge the record.

Images No Images

12/09/2020

09:00 AM PARTIAL RECORD LODGED MCKINNEY, KWASI ANDRADE

Entry: none.

Images No Images

12/09/2020

09:00 AM WRIT OF CERTIORARI TO COMP REC MCKINNEY, KWASI ANDRADE

Entry: Writ issued; complete Rule 37.1 appellate record is due in thirty days (January 8, 2021). The clerk is directed to set a briefing schedule when the complete record is lodged.

Images WRIT

12/09/2020

09:00 AM FORMAL ORDERS - COA MCKINNEY, KWASI ANDRADE

Entry: Appellant's pro se motion to lodge the record is treated as a motion for rule on clerk and granted. Partial record filed in Arkansas Court of Appeals this date, as case no CR-20-658. Writ issued; complete Rule 37.1 appellate record is due in thirty days (January 8, 2021). The clerk is directed to set a briefing schedule when the complete record is lodged.

Images ORDER

12/09/2020

03:55 PM CLERK NOTE

Entry: Order mailed to appellant at the following address: [REDACTED]

Images No Images

12/17/2020

12:47 PM WRIT RETURNED; COMP REC FILED

Entry: 1 volume supplemental record; 121 pages.

Images No Images

12/17/2020

02:11 PM BRIEFING COMMENCED MCKINNEY, KWASI ANDRADE

Entry: Appellant's brief is due January 26, 2021. Briefing notice sent to Kwasi McKinney and Attorney General's Office. Briefing notice mailed to pro se appellant at the following address: [REDACTED]

Images Briefing notice

12/21/2020

10:53 AM LETTER TO APPELLANT

Entry: Advising pro se appellant to file brief conventionally, due by January 26, 2021.

Images LETTER

01/08/2021

08:49 AM LETTER TO APPELLANT MCKINNEY, KWASI ANDRADE

Entry: Acknowledging receipt and filing of appellant's brief.

Images LETTER

01/08/2021

03:19 PM APPELLANT'S BRIEF MCKINNEY, KWASI ANDRADE

Entry: Appellant's pro se brief filed. Six paper copies received this date.

Images Appellant's Pro Se Brief

01/11/2021

09:53 AM ENTRY OF APPEARANCE EANES JR , DAVID L

Entry: Entry of appearance of David L. Eanes, Jr. on behalf of the appellee.

Images OTHER

02/03/2021

03:14 PM RECUSAL BARTON F. VIRDEN, JUDGE,

Entry: none.

Images No Images

02/04/2021

10:24 AM 7 DAY BRIEF EXTENSION EANES JR , DAVID L

Entry: Appellee's brief is due February 14, 2021 after 7-day brief extension.

Images LETTER

02/16/2021

02:07 PM APPELLEE'S BRIEF EANES JR , DAVID L

Entry: Appellee's Brief efiled by attorney. 6 Paper copies due Feb 21, 2021 Six paper copies received Feburary 22, 2021.

Images Appellee's Brief

02/22/2021

10:16 AM 7 DAY BRIEF EXTENSION MCKINNEY, KWASI ANDRADE

Entry: Appellant's reply brief is now due March 10, 2021.

Images No Images

02/22/2021

12:09 PM LETTER TO APPELLANT MCKINNEY, KWASI ANDRADE

Entry: Acknowledging receipt of request for seven day clerk's extension. Reply brief is due March 10, 2021.

Images LETTER

03/04/2021

03:25 PM PRO SE MOTION FOR EXT OF TIME MCKINNEY, KWASI ANDRADE

Entry: Appellant's pro se motion for extension of time to file a reply brief.

Images MOTION

03/04/2021

03:26 PM LETTER TO APPELLANT MCKINNEY, KWASI ANDRADE

Entry: Acknowledging receipt and filing of pro se motion for extension of time to file a reply brief.

Images LETTER

03/08/2021

02:28 PM LETTER TO APPELLANT MCKINNEY, KWASI ANDRADE

Entry: Acknowledging receipt and filing of appellant's pro se reply brief.

Images LETTER

03/08/2021

03:24 PM REPLY BRIEF MCKINNEY, KWASI ANDRADE

Entry: Pro se reply brief filed March 8, 2021. Clerks office received one copy.

Images Reply Brief

03/10/2021

09:00 AM MOTION SUBMITTED MCKINNEY, KWASI ANDRADE

Entry: Appellant's pro se motion for extension of time to file a reply brief.

Images No Images

03/17/2021

09:01 AM FORMAL ORDERS - COA MCKINNEY, KWASI ANDRADE

Entry: Appellant's pro se motion for extension of time to file a reply brief is moot. Virden, J., not participating.

Images ORDER

03/17/2021

11:59 AM CLERK NOTE

Entry: Order mailed to appellant at the following address: 


Images No Images

04/28/2021

09:00 AM CASE SUBMITTED MCKINNEY, KWASI ANDRADE

Entry: none.

Images No Images

05/12/2021

09:00 AM MAJORITY OPINION LARRY D. VAUGHT, JUDGE,

Entry: Affirmed. Klappenbach and Whiteaker, JJ., agree.

Images OPINION

05/12/2021

09:00 AM OPINION PANEL MCKINNEY, KWASI ANDRADE

Entry: none.

Images No Images

05/12/2021

09:34 AM CLERK NOTE

Entry: Opinion mailed to Kwasi Andrade Mckinney [REDACTED]

Images No Images

05/24/2021

04:01 PM PETITION TENDERED

Entry: Petitioner's pro se petition for review. Tendered.

Images PETITION

05/24/2021

04:03 PM LETTER TO APPELLANT

Entry: Acknowledging receipt of pro se petition for review. Petition tendered.

Images LETTER

05/27/2021

02:52 PM PRO SE PET FOR REHEARING MCKINNEY, KWASI ANDRADE

Entry: Appellant's pro se petition for rehearing.

Images Petition for rehearing

05/27/2021

02:53 PM LETTER TO APPELLANT

Entry: Acknowledging receipt and filing of pro se petition for rehearing.

Images LETTER

06/01/2021

02:58 PM RESPONSE TO PET FOR REHEARING EANES JR , DAVID L

Entry: Appellee's response to petition for rehearing.

Images RESPONSE

07/07/2021

09:00 AM PET FOR REHEARING SUBMITTED MCKINNEY, KWASI ANDRADE

Entry: Appellant's pro se petition for rehearing.

Images No Images

07/14/2021

09:00 AM LETTER ORDERS - COA MCKINNEY, KWASI ANDRADE

Entry: Appellant's pro se petition for rehearing is denied. Virden, J., not participating.

Images ORDER

07/15/2021

08:55 AM PETITION FOR REVIEW MCKINNEY, KWASI ANDRADE

Entry: Appellant's pro se petition for review.

Images PETITION

07/15/2021

02:51 PM LETTER TO APPELLANT

Entry: Acknowledging receipt and filing of pro se petition for review.

Images LETTER

07/20/2021

10:45 AM RESPONSE TO PET FOR REVIEW EANES JR , DAVID L

Entry: Appellee's response to petition for review.

Images RESPONSE

08/26/2021

12:52 PM PETITION FOR REVIEW SUBMITTED MCKINNEY, KWASI ANDRADE

Entry: none.

Images No Images

09/23/2021

10:00 AM PETITION FOR REVIEW DENIED MCKINNEY, KWASI ANDRADE

Entry: none.

Images No Images

09/23/2021

10:00 AM FORMAL ORDERS - SC MCKINNEY, KWASI ANDRADE

Entry: Appellant's pro se petition for review is denied.

Images ORDER

09/23/2021

10:07 AM MANDATE TO CLERK

Entry: none.

Images Mandate

11/29/2021

08:41 AM LETTER TO APPELLANT

Entry: Acknowledging receipt of pro se motion to recall the mandate. Motion returned to appellant.

Images LETTER

12/02/2021

03:50 PM LETTER TO APPELLANT

Entry: Letter to appellant.

Images LETTER

12/08/2021

02:18 PM MOTION TO RECALL MANDATE MCKINNEY, KWASI ANDRADE

Entry: Appellant's pro se motion to recall the mandate.

Images MOTION

12/08/2021

02:20 PM LETTER TO APPELLANT

Entry: Acknowledging receipt and filing of pro se motion to recall the mandate.

Images LETTER

12/13/2021

10:13 AM RESPONSE TO MOTION EANES JR , DAVID L

Entry: Response to motion to recall mandate.

Images RESPONSE

01/05/2022

09:00 AM MOTION SUBMITTED MCKINNEY, KWASI ANDRADE

Entry: Appellant's pro se motion to recall the mandate.

Images No Images

01/12/2022

09:00 AM FORMAL ORDERS - COA MCKINNEY, KWASI ANDRADE

Entry: Appellant's pro se motion to recall the mandate is denied. Virden, J., not participating.

Images ORDER

01/12/2022

12:00 PM CLERK NOTE

Entry: Order mailed to appellant at 

Images No Images

03/03/2022

02:10 PM NOT OF FIL PET IN US SUP CRT

Entry: Notice that a petition for writ of certiorari has been filed as case No. 21-7213.

Images LETTER

04/21/2022

11:37 AM NOT OF FIL PET IN US SUP CRT

Entry: Notice that petition for a writ of certiorari is denied.

Images OTHER

CR-22-193 - KWASI MCKINNEY V STATE OF ARKANSAS

Filing Date: Thursday , March 31st, 2022

Court: AR - STATE OF ARKANSAS

Location: SC - SUPREME COURT

Type: WM - WRIT OF MANDAMUS - CR

Status: FINAL - FINAL

Case Parties

Seq #	Assoc	End Date	Type	ID	Name
1			PETITIONER	[REDACTED]	MCKINNEY, KWASI ANDRADE
Aliases: none					
2			RESPONDENT	[REDACTED]	STATE OF ARKANSAS
Aliases: none					
3			DEFENDANT/RESPONDENT ATTORNEY	[REDACTED]	ATTORNEY GENERAL
Aliases: none					
5			LOWER COURT JUDGE	[REDACTED]	TALLEY JR , DAVID W
Aliases: JR., DAVID W. TALLEY					
6			LOWER COURT CLERK	[REDACTED]	COLUMBIA COUNTY CIRCUIT COURT
Aliases: none					
4			DEFENDANT/RESPONDENT ATTORNEY	[REDACTED]	JOHNSON, DARNISA C EVANS
Aliases: JOHNSON, DARNISA EVANS					

03/31/2022

01:00 PM PARTIAL RECORD LODGED

Entry: 1 volume; 11 pages.

Images No Images

03/31/2022

01:00 PM LOWER COURT INFORMATION

Entry: none.

Images No Images

03/31/2022

02:43 PM PRO SE PET FOR WRIT MANDAMUS MCKINNEY, KWASI ANDRADE

Entry: Petitioner's pro se petition for writ of mandamus.

Images PETITION

03/31/2022

02:45 PM LETTER TO APPELLANT

Entry: Acknowledging receipt and filing of pro se petition for writ of mandamus.

Images LETTER

05/12/2022

10:00 AM MOTION SUBMITTED MCKINNEY, KWASI ANDRADE

Entry: Petitioner's pro se petition for writ of mandamus.

Images No Images

05/26/2022

10:00 AM FORMAL ORDERS - SC MCKINNEY, KWASI ANDRADE

Entry: Petitioner's pro se petition for writ of mandamus is denied.

Images ORDER

06/06/2022

01:35 PM PRO SE MOTION RECONSIDERATION MCKINNEY, KWASI ANDRADE

Entry: Petitioner's pro se motion for reconsideration.

Images MOTION

06/06/2022

01:35 PM LETTER TO APPELLANT

Entry: Acknowledging receipt and filing of pro se motion for reconsideration.

Images LETTER

06/09/2022

10:00 AM MOTION SUBMITTED MCKINNEY, KWASI ANDRADE

Entry: Petitioner's pro se motion for reconsideration.

Images No Images

06/23/2022

10:00 AM FORMAL ORDERS - SC MCKINNEY, KWASI ANDRADE

Entry: Petitioner's pro se motion for reconsideration is denied.

Images ORDER

14CR-16-35 - STATE V KWASI ANDRADE MCKINNEY -JURY TRIAL

Filing Date: Monday , March 21st, 2016

Court: 14 - COLUMBIA

Location: CI - CIRCUIT

Type: DI - FELONY

Status: CLOSED - CASE CLOSED

Case Parties

Seq #	Assoc	End Date	Type	ID	Name
1			JUDGE	[REDACTED]	13TH CIRCUIT DIVISION 5

Aliases: TALLEY

2			DEFENDANT	[REDACTED]	MCKINNEY, KWASI ANDRADE
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Aliases: none

7			DEFENDANT/RESPONDENT ATTORNEY	[REDACTED]	HURST, JOSH QUINCY
---	--	--	-------------------------------	------------	--------------------

Aliases: HURST, JOSH

HURST, JOSH Q

5			PROSECUTING ATTORNEY	[REDACTED]	STATE OF ARKANSAS
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Aliases: none

6			PUBLIC DEFENDER	[REDACTED]	JEFFREY, ROBERT NEAL
---	--	--	-----------------	------------	----------------------

Aliases: none

4			PLAINTIFF	[REDACTED]	PHILLIPS, RYAN P
---	--	--	-----------	------------	------------------

Aliases: PHILLIPS, RYAN P.

Violations

MCKINNEY, KWASI ANDRADE

Violation: 1 Citation#: Age at Violation: [REDACTED] Plea: 29-NOV-16 GUILTY
5-64-422(b)(2) DELIVER METH COCAINE HEROIN => 2g <10g; FB Disp:29-NOV-16 GUILTY

Level: FB CLASS B FELONY

Violation Date: 24-NOV-15

Violation Time:

MCKINNEY, KWASI ANDRADE

Violation: 2 Citation#: Age at Violation: [REDACTED] Plea: 29-NOV-16 GUILTY
5-64-422(b)(1) DELIVER METH COCAINE HEROIN < 2g; FC Disp:29-NOV-16 GUILTY

Level: FC CLASS C FELONY

Violation Date: 10-NOV-15

Violation Time:

MCKINNEY, KWASI ANDRADE

Violation: 3 Citation#: Age at Violation: [REDACTED] Plea: 29-NOV-16 GUILTY
5-64-402(b)(1) MAINTAIN DRUG PREMISES; FC Disp:29-NOV-16 GUILTY

Level: FC CLASS C FELONY

Violation Date: 28-JAN-16

Violation Time:

Violation Text:CONTEXTE REFLECTS VIO LEVEL AS FC PER COVERSHEET VIO LEVEL IS FB

MCKINNEY, KWASI ANDRADE

Violation: 4 Citation#: Age at Violation: ■ Plea: 29-NOV-16 NOT GUILTY
5-27-205 ENDANGERING THE WELFARE OF A MINOR - 1ST DEGREE; FD Disp:29-NOV-16 NOLLE
PROSEQUI

Level: FD CLASS D FELONY

Violation Date: 24-NOV-15

Violation Time:

MCKINNEY, KWASI ANDRADE

Violation: 5 Citation#: Age at Violation: ■ Plea: 29-NOV-16 GUILTY
5-74-106 DRUGS AND FIREARMS, SIMULTANEOUS POS OF; FY Disp:29-NOV-16 GUILTY

Level: FY CLASS Y FELONY

Violation Date: 28-JAN-16

Violation Time:

MCKINNEY, KWASI ANDRADE

Violation: 6 Citation#: Age at Violation: ■ Plea: 29-NOV-16 GUILTY
5-64-420(b)(2) POSSESS W PURPOSE DEL METH COCAINE HEROIN => 2g <10g; FB Disp:29-NOV-
16 GUILTY

Level: FB CLASS B FELONY

Violation Date: 28-JAN-16

Violation Time:

MCKINNEY, KWASI ANDRADE

Violation: 7 Citation#: Age at Violation: ■ Plea: 29-NOV-16 GUILTY
5-73-103(c)(2) POSSESS FIREARMS BY CERTAIN PERSONS; FD Disp:29-NOV-16 GUILTY
Level: FD CLASS D FELONY
Violation Date: 28-JAN-16
Violation Time:
MCKINNEY, KWASI ANDRADE

Violation: 8 Citation#: Age at Violation: ■ Plea: 29-NOV-16 GUILTY
5-64-411 PROXIMITY-ENHANCED PENALTY FOR 5-64-401; FB Disp:29-NOV-16 GUILTY
Level: FB CLASS B FELONY
Violation Date: 10-NOV-15
Violation Time:
Violation Text:HABITUAL OFFENDER

Sentence

Name: KWASI ANDRADE MCKINNEY Sentence: DOC:-DEPARTMENT OF CORRECTIONS
Sequence: 10

Length: 216 MONTH(S) Suspended Length: DAY(S) Consecutive: Concurrent:

Served: Signed: Start: Probation: Completion:

Sentence Detail:

Violation(s)

Violation No: 3, 5-64-402(b)(1) , MAINTAIN DRUG PREMISES; FC

Name: KWASI ANDRADE MCKINNEY Sentence: DOC:-DEPARTMENT OF CORRECTIONS
Sequence: 14

Length: 120 MONTH(S) Suspended Length: DAY(S) Consecutive: Concurrent:

Served: Signed: Start: Probation: Completion:

Sentence Detail:

Violation(s)

Violation No: 8, 5-64-411 , PROXIMITY-ENHANCED PENALTY FOR 5-64-401; FB

Name: KWASI ANDRADE MCKINNEY Sentence: DOC:-DEPARTMENT OF CORRECTIONS
Sequence: 12

Length: 360 MONTH(S) Suspended Length: DAY(S) Consecutive: Concurrent:

Served: Signed: Start: Probation: Completion:

Sentence Detail:

Violation(s)

Violation No: 6, 5-64-420(b)(2) , POSSESS W PURPOSE DEL METH COCAINE HEROIN => 2g <10g; FB

Name: KWASI ANDRADE MCKINNEY Sentence: DOC:-DEPARTMENT OF CORRECTIONS
Sequence: 9

Length: 72 MONTH(S) Suspended Length: DAY(S) Consecutive: Concurrent:

Served: Signed: Start: Probation: Completion:

Sentence Detail:

Violation(s)

Violation No: 2, 5-64-422(b)(1) , DELIVER METH COCAINE HEROIN < 2g; FC

Name: KWASI ANDRADE MCKINNEY Sentence: DOC:-DEPARTMENT OF CORRECTIONS
Sequence: 8

Length: 216 MONTH(S) Suspended Length: DAY(S) Consecutive: Concurrent:

Served: Signed: Start: Probation: Completion:

Sentence Detail:

Violation(s)

Violation No: 1, 5-64-422(b)(2) , DELIVER METH COCAINE HEROIN => 2g <10g; FB

Name: KWASI ANDRADE MCKINNEY Sentence: DOC:-DEPARTMENT OF CORRECTIONS
Sequence: 13

Length: 144 MONTH(S) Suspended Length: DAY(S) Consecutive: Concurrent:
Served: Signed: Start: Probation: Completion:

Sentence Detail:

Violation(s)

Violation No: 7, 5-73-103(c)(2) , POSSESS FIREARMS BY CERTAIN PERSONS; FD

Name: KWASI ANDRADE MCKINNEY Sentence: DOC:-DEPARTMENT OF CORRECTIONS
Sequence: 11

Length: 720 MONTH(S) Suspended Length: DAY(S) Consecutive: Concurrent:
Served: Signed: Start: Probation: Completion:

Sentence Detail:

Violation(s)

Violation No: 5, 5-74-106 , DRUGS AND FIREARMS, SIMULTANEOUS POS OF; FY

In the Circuit Court of Columbia County, Arkansas

FILED
Stephanie Brown
2019 DEC 12 PM 1:57

Fifth Division

State of Arkansas

Plaintiff/Respondent

Vs.

No. 14CR-16-35

Kwasi McKinney

Defendant/ Petitioner

Petition for Relief Under Ark. R. Crim. P. 37.1

The defendant-petitioner petitions the court for a new trial of the case against him under Ark. R. Crim. P. 37.1 and he states as follows:

McKinney was charged with delivery of methamphetamine, possession of methamphetamine, maintaining a drug premises, simultaneous possession of drugs and firearm, possession of methamphetamine with intent to deliver, possession of firearm by certain person and proximity to certain facilities. On November 29, 2016 a Columbia County jury found McKinney guilty on all counts and was sentence to serve eighteen years (18) < six years (6), eighteen years(18), sixty years(60), thirty years(30), twelve years(12), and ten year(10) imprisoned to be run consecutively, for a total of 154 years. McKinney appealed to the Arkansas Court of Appeals and was denied October 17, 2019 in CR-18-546, the date the mandate also issued. This petition is timely filed, within sixty (60) days after that date, pursuant to Ark. R. Crim. P. 37.2.

Strickland's standard of Review: The burden of proof of an Ineffectiveness Claim-does it undermine confidence in the outcome?

In Strickland vs. Washington, 466 U.S. 668 (1984), the Supreme Court recognized that the right to effective assistance is essential to protect the fundamental right to a fair trial. To prevail on a claim of ineffective assistance, it must be shown that counsel's performance was deficient and that the deficient performance prejudiced the defense. The standard is "reasonable professional assistance", meaning that counsel has a duty to bring "such skill and knowledge as will render the trial a reliable adversarial testing process." See also Wiggins vs. Smith, 539 U.S. 510 (2003). To succeed on an ineffective assistance claim, it must be shown that counsel's performance fell below an "objective standard of reasonableness" and that there is a "reasonable

probability that, but for counsel's unprofessional errors, the results of the proceedings would have been different." A "reasonable probability" is a probability sufficient to undermine confidence in the outcome. Vick vs. State, 301 Ark. 296, 782 S.W. 2d. 396 (1990).

The standard for evaluating claims of ineffective assistance of appellate counsel is similar, Bell vs. Lockhart, 795 F. 2d 655 (8th Cir. 1986). If appellate counsel negligently fails to raise issue, and there is a reasonable probability that the issue, if raised, would have resulted in a reversal, relief is warranted. See Jones vs. Barnes, 463 U.S. 745 (1984).

In this case, trial and appellate counsel were ineffective in several respects.

Ground One: McKinney was constructively denied his right to counsel. Trial court abuse of discretion caused^{Trial Counsel} to prejudice with a deficient performance and inadequate representation in violation of the 6th Amendment.

(A) Trial court abused its discretion in denial of Trial Counsel motion to be relived as counsel. In said motion, paragraph (2) stated the defendant was not cooperating with defense counsel in preparing his defense in this matter. **How?** Paragraph (3) stated the defendant is not in communication with defense counsel and is not complying with agreements he has entered. **What agreements?** Paragraph (4) Defendant instructed counsel to withdraw as his Attorney and paragraph (5) counsel states that he was not prepared for trial.

(B) Conflict between McKinney and Counsel was serious and gave rise to presumption that McKinney was prejudice by his inability to communicate with Counsel. Trial court did not fulfill its duty to inquire into the conflict. Before ruling on a Motion to Withdraw of Counsel do to an irreconcilable conflict, a court must conduct such necessary inquiry as might ease the defendant's dissatisfaction, distrust, and concerns and the inquiry must also provide a sufficient basis for reaching an informed decision. James vs. Brigano, 470 F. 3d. 636 (8th cir. 2006).

(C) Trial Counsel Josh Q Hurst utterly failed to develop and present a defense for trial. Counsel did not file substantive pre-trial motions. Counsel had several procedural motions denied as untimely. Counsel did not file for omnibus hearing to develop factual findings evidence. Counsel failed to investigate witnesses. Counsel did not subpoena witnesses. Counsel did not object to prosecution evidence. Counsel did not strike bias juror, defendant was prejudice by counsel at guilty phase and sentencing, etc. . .

Ground Two: Counsel was ineffective for failure to file motion to suppress wiretape and drug evidence.

(A) McKinney has a right to be free from unreasonable searches and seizure was violated by a unauthorized wire-tape interception made by police on November 10 and 24, 2015. Each application for an order authorizing or approving the interception of wire, oral, or electronic communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Arkansas Rules of Criminal Procedure 10.1. Relying upon Kate vs. United States 389 U.S. 347, 88, S. Ct. 507 14 L. Ed 2d. 536, without prior judicial authorization no part of the contents such communication and no evidence derived therefore may be received in any trial.

(B) There's no record in this case shows that Detective Chambers and Detective ~~Hester~~^{Bradshaw} had an order from a Judge authorizing or approving the interception of wire-tape. The unlawfully interception of wire-tape was an illegal search of the property of McKinney under the Fourth Amendment of the United States Constitution and therefore should be suppressed as well as any and all evidence gain as a result of search warrant. Wong Sun v. United States, 371 U.S. 471 (1963)

Ground Three: Trial Counsel was ineffective for failure to file motion to sever offense. Trial Court erred in consolidating offenses for trial purposes.

(A) McKinney was charged with delivery of methamphetamine for November 10, and November 24, 2015. The only connection between the two sales was fact that both were made to one of the same confidential informer and such showing along was insufficient to connect two sales by a single scheme or plan within meaning of applicable rule Arkansas Rule of Criminal Procedure 22.2, Teas vs. State 1979, 266 Ark. 572, 587 S.W. 2d. 28. The purpose of Ark. R. Crim. P. 22.2 is to give effect to the principle that the state cannot bolster its case against the accused by proving that he has committed other similar offenses in the past. Alford vs. State, 223 Ark. 330, 266 S.W. 2d. 804.

(B) Delivery of control substance to confidential informant in exchange for money on November 10, 2015 and deliver of control substance 14 days later on November 24, 2015, did not involve a single scheme or plan citing Bunn vs. State 1995, 898 S.W. 2d. 450, 320 Ark 516. Joiner was not proper in this case because the offenses were committed at different times, were not part of the same transactions or plans and involves different witnesses and evidence. Turner vs. State 2011, 380 S.W. 3d. 400 2011 Ark. 111.

(C) Pursuant to Arkansas Rules of Criminal Procedure 23.1 (a) trial court erred in consolidating the offenses from November 2015 and offenses on January 28, 2016 for purpose of trial. Clay vs. State, 1994, 886 S.W. 2d. 608, 318 Ark. 550.

Some witnesses were indorsed in only one of the offenses consolidated for trial and that permitting the testimony to be considered by the jurors as to all of the offenses was error. Witness endorsed to testify in one proceeding unless endorsed by the court to testify in all proceedings even if the charges are alike in nature. In fact, Rule of Evidence 404 (b) has nothing to do with the endorsement of witness, but rather concerns the admissibility of evidence of prior crimes or wrongs. U.S. vs. Moore 375 F. 3d. 259 264-65 (8th cir. 2009). It is plain error to admit prejudicial evidence of McKinney prior bad acts.

Ground Four: McKinney was prejudice by Appellate Counsel deficient performance in failing to raise prosecutor failed to comply with discovery motion pursuant to Arkansas Rules of Criminal Procedure 17.1 and abandon argument relating to Motion to Compel Testing of certain evidence.

(A) McKinney Trial Counsel filed a Motion for Discovery requesting expert scientific testings and results of any test. The existing of the submission sheet which had been submitted with the firearm was not revealed to McKinney. The Prosecutor for the state violated Arkansas Rule of Criminal Procedure 17.1, when they failed to disclose to defense counsel crime Laboratory results on firearm. McKinney trial counsel was entitles to requested material relating to Laboratory testing performed by the state expert and absent of diligent failure of state to provide material was unfairly prejudice to McKinney. Arkansas Rules of Criminal Procedure 17.3, Hunter vs. State, 316 Ark. 746, 875 S.W. 2d. 630. In cases where prejudice will result from the states failure to comply with pre-trial discovery rules, the trial court must take appropriate action to remove the prejudice by excluding the evidence, ordering discovery, granting a continuance or entering another order appropriate under the circumstances. Shuffield vs. State, 23 Ark. App. 167, 745 (1998).

In Brady vs. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194-97 10 L. Ed 2d. 215, 218 (1963) the state was required to turn over allegedly exculpatory DNA evidence in order to allow defendant to make colorable showing on innocent. State alleged withholding of laboratory testing results constitutes Brady Violation, given that allegedly withheld evidence would have excluded McKinney.

(B) Appellate Counsel Lott Rolfe IV proves to be ineffective for failure to raise appealable issue on appeal relating to fingerprint testing of firearm. Two months prior to trial, Counsel filed a Motion to compel testing of certain evidence regarding to the offense possession of firearm by certain person. The trial court denied McKinney motion for untimely. The offense contained material; circumstantial, substantial evidence within discovery to raise the issue of stated offense should have been dismissed due to lack of evidence.

Ground Five: Counsel was ineffective for failure to properly challenge the sufficiency of evidence on Motion for Directed Verdict.

(A) Counsel motion for directed verdict was too general to preserve for appeal. Counsel did not specifically advise the circuit court as to how the evidence was deficient. The evidence was insufficient to support McKinney convictions for possession of firearm by certain person, possession with intent to deliver methamphetamine, and simultaneous possession of drugs and firearm. To prove constructive possession of contraband, the state is required to establish beyond a reasonable doubt: (1) the defendant exercised care, control and management over the contraband, and (2) the defendant knew the matter possessed was contraband. Williams vs. State, 54 Ark. App. 352, 927 S.W. 2d. 501 reversed 327 Ark. 213 939 S.W. 2d. 856.

The state did not meet its burden of proving every element of every criminal offense beyond a reasonable doubt. Detective Chambers testified under oath and presented the element of reasonable doubt by stating the gun and drugs could have belonged to the other ^{suspects} ~~subjects~~ (Jaylon McKamie and S. Mullins) in the home at the time of search, but was not investigated and the firearm and drugs was not submitted to the lab for latent-printing testing. During the search, Agent Bradshaw found \$305.00 on Jaylon McKamie and messages in his phone indicating he had been trafficking drugs.

(B) To sustain a conviction of simultaneous possession of drugs and firearm, the firearm has to be readily accessible for use. A.C.A. 5-74-106(d). There's no evidence indicating the firearm that was recovered was readily accessible for use. McKinney had remained outside the home while officers conducted the search. 5-74-106(d) Vergara-Seto vs. State 202, 74 S.W. 3d. 653, 77 Ark. App. 280. This is insufficient to demonstrate a prima facie of constructive possession. Boston vs. State, 2000 S.W. 3d. 245, 69 Ark. App. 155. Based on this evidence, it is not beyond the realm of possibility that someone else planted the (firearm and drugs) and left [McKinney] to take the fall and face consequences.

Ground Six: Trial Counsel failed to request jury instruction of charged offense of Arkansas Code Annotated 5-64-411 "Proximity to certain facilities" which carries an enhancement of a mandatory ten years.

(A) (b) Statue providing that a person is subject to enhanced sentencing of an additional term of imprisonment if the person delivering the control substance and the offense is committed on or within 1000 feet of a church required proof of a culpable mental state, a culpable mental state is nonetheless required and is established only if a person acts purposely, knowingly or recklessly (Emphasis Added). Small vs. State 2018 Ark. App. 80, 543 S.W. 3d 516, A.C.A. 5-2-203(b).

The state failed to address McKinney culpable mental state, a key element of the crime, and that there was no evidence that he was aware of the church's location. The state also did not present evidence that McKinney acted purposely or knowingly, it failed to meet its burden of proof.

Ground Seven: McKinney was prejudice by Trial Counsel and Appellate Counsel for failure to properly present and/or litigate a number of potentially meritorious arguments relating to Motion to Suppress Statement.

(A) (b) McKinney custodial statement was used to corroborate other state evidence. McKinney statement was insufficient to support his conviction for simultaneous possession of drugs and firearm, possession of firearm by certain person, possession with intent to deliver and maintaining a drug premises.

McKinney statement did not included admission on the above stated charges. The statement only revealed information about his methamphetamine trade, but he did not confess to any facts surrounding the charges he faces at trial, for instant he did not confess to the November 10 or 24, 2015 drug transaction or possessing any of the evidence obtained in the search of his home on January 29, 2016.

A conviction cannot be had in any case of felony upon the tending to connect the defendant with the commission of the offense. A.C.A. 16-89-111 (e)(A), Smith vs. State, 202 2012 Ark. App. 534, 423 S.W., 3d. 624. Evidence that merely raises suspicion of guilt is insufficient. A.C.A. 16-89-111 (e)(A). The statement was insufficient to support a finding of guilt and if the statement was eliminated other evidence would have not showed guilt. A.C.A. 16-89-111 (e)(1)(A), Picket vs. State 301 Ark. 345. The state did not meet its burden of proof. The jury's guilty verdict resorts to speculation and conjecture.

(B) The statement made by McKinney that was submitted to the jury was edited and altered. On remand for suppression hearing on motion to suppress statement, Prosecutor Ryan Phillips admitted the statement that was played at trial was not the full version. Prior to the suppression hearing on statement, Mr. Phillips produces a different statement from the statement that was played at trial asserting that it was McKinney full custodial statement.

The State edited, altered, and intentionally deleted exculpatory points within McKinney custodial recording statement. The withholding of exculpatory and mitigating evidence in favor of the accused violated Brady vs. Maryland also the Sixth and Fourteenth Amendment rights to a fair and impartial trial.

(C) The basis of Arkansas Rule of Criminal Procedure 4.7 (b)(1) + (3) are meritorious in regards to the Motion to Suppress statement of the following guidelines: Ark. R. Crim. P. 4.7 (b)(1). In determining the admissibility of any custodial statement, the court may consider together with all other relevant evidence and consisted with existing law, whether an electronic recording is substantially accurate and not intentionally altered. Ark. R. Crim. P.4.7 (b)(3), "Nothing in this rule preclude the admission of a statement that is used only for impeachment and not as substantive evidence."

No custodial interrogational statement shall in any way be edited, altered from its original format. Nothing prevents this recorded statement to be played in open court, to be used only for impeachment, but never for substantial evidence.

(D) McKinney made a statement to Special Agent Louis Ilmer and Agent Chambers at the Columbia County Sheriff's office. McKinney submits that he did not legally waive his rights to remain silent. The burden is on the state to prove by a preponderance of evidence that a custodial statement was given voluntarily and was knowingly and intelligently made.

On remand for suppression hearing on Motion to suppress statement, Agent Ilmer did not show and testify as a witness to McKinney in-custody statement. The State evidence shows that Agent Ilmer was present when McKinney made the statement, and his name was signed as a witness at the end of the statement. The State did not meet its burden of proof by failure to call Agent Ilmer that was present at the time of the interrogation or giving an adequate explanation for his absence. Smith vs. State 256 Ark. 67 S.W. 2d. 504, A.C.A. 16-89-107(b).

Ground Eight: On remand for motion to suppress search hearing, counsel unreasonably failed to raise and litigate the Frank vs. Delaware issue that existed with respect to the affidavit for the search warrant.

(A) On remand, a suppression hearing was held, but a full and fair hearing was not held, all due to the counsel's ineffectiveness. McKinney defense counsel was ineffective in inadequately pursuing a suppression motion based upon Franks vs. Delaware, 438 U.S. 154 (1978). While counsel motion was arguably sufficiently specific to raise grounds for suppression based upon Franks vs. Delaware, 438 U.S. 154 (1978) at the suppression hearing counsel presented no testimony or other evidence to support the motion to suppress search under Franks, if an officer submits false information or omits critical information from a search warrant application and obtain a warrant, the resultant search may be unreasonable under the Fourth Amendment. Untied States vs. Stropes, 387 F. 3d. 766, 77 (8th Cir. 2004).

(B) McKinney submits that the affidavit for the search warrant contained false statements that were necessary to finding of probable cause for search. The statement made in the affidavit for the warrant is obviously false with the respect to the amount of controlled substance that was allegedly purchased from McKinney. In the affidavit, Agent Chambers stated under oath the drug transaction supposedly engaged on November 10, 2015 involved the purchase of 1.8 grams of methamphetamine. However; crime lab results showed 1.3 grams and Drug Chemist Jennifer Shirley testified at trial that it was 1.3 grams. That leaves apparently a half of gram (0.5 grams) missing. The affiant's statement in the affidavit for the warrant regarding the amount of controlled substance involving in this alleged transaction is false. Chambers stated under oath in the affidavit for the warrant that the drug transaction supposedly engaged in November 24, 2015 involved the purchase of 6.1 grams of methamphetamine. However; crime lab results showed 4.6 grams and Drug Chemist Jennifer Shirley testified to the results at trial. Once again, where is the missing methamphetamine? The statement in the affidavit for warrant again is false. Aside the Frank issue presented here, this raises serious questions about the evidence in this case (methamphetamine) and how, when, where and why some of it came up missing.

Ground Nine: Counsel was ineffective for failure to object to trial court abuse of discretion in sentencing McKinney to consecutive sentences.

(A) A defendant in criminal proceedings has a right under the Sixth Amendment to effective assistance from his attorney at all critical stages in the proceedings which include sentencing.

Defense counsel's decision to stand silent at sentencing warrant presumption of prejudice. At the close of the case, the trial court chose to give McKinney consecutive sentences for each conviction for 154 years. McKinney does not feel that a case like this warrants imposition of a 154 year sentence and that there was an abuse of discretion by the trial court in imposing such a sentence.

(B) The trial court did not give a clear reason as to why it chose to sentence McKinney to consecutively for his conviction. A factor that should have been given considerable weight, in determining sentence, is that McKinney gave a recorded statement after his arrest detailing his involvement in illegal drug activity. McKinney also appears to have been told that he would be treated favorably by choosing to cooperate with Law enforcement officers.

Ground Ten: McKinney was denied rights to impartial Judge. Counsel was ineffective for failing to file motion for Judge to reverse.

(A) In 2006, David W. Talley Jr., Arkansas Bar No. 82155, was reprimanded and fined (CPC docket no. 2006-044) for violating several rules of Arkansas Rules of Professional Conduct offenses involving "moral turpitude" offenses involving dishonesty, breach of trust, or serious interference with the administration of justice can indicate indifference to legal obligation. Mr. Talley misconducts reflects adversely on his honesty, impartiality, temperament of fitness to serve as a Judge, in that it constituted failure to maintain personal integrity and brought bench and bar into disrepute. Rule of Disciplinary Enforcement 11 (D)(4).

Ground Eleven: McKinney was prejudice by substitution of counsel pursuant to Arkansas Rules of Professional Conduct 1.9 (Duties to former Clients).

(A) Attorney Michael Yarbrough filed a motion to withdraw from McKinney case because he had landed a job with the Attorney General Office which is directly adverse to Mr. McKinney. Mr. Yarbrough requested to be substituted with Attorney Jason Davis who is associated in the same firm. Mr. Yarbrough motion to substitute counsel of record was granted and Attorney Jason Davis was appointed as counsel for McKinney.

The Arkansas Court of Appeals erred when they substituted counsel in the same Law Firm pursuant to Arkansas Rules of Professional Conduct 1.9 (a)(b)(1)(2)(c)(1)(2) such prior representation has a duty to obtain McKinney consent before appointing a Attorney in the same Law Firm.

Ground Twelve: Counsel failed to file motion for Judge to recuse from all proceedings on grounds of conflict of interest.

(A) Judge Talley previously represented McKinney in multiple criminal cases occurring over the course of seven years. With Judge Talley having a long-standing attorney-client relationship with McKinney, it is nearly unquestionable that Judge Talley became intimately familiar with certain aspects of McKinney's lifestyle, his habits, his trial strategies, his character, his propensity for truthfulness, etc. It is for this very reason the attorney-client privilege extends even beyond death of the client.

(B) A conflict of interest falls under Arkansas Code of Judicial Conduct 2.11 (A) a Judge shall disqualify himself or herself in any proceedings in which the judge's impartiality might reasonably be questioned including but not limited to the following circumstances 2.11 (A) 1-6 Arkansas Code of Judicial Conduct 2.11 (C) states Judge is subject to disqualify under this rule, other than for bias or prejudice under paragraph (A)(1).

(C) The definition for recuse in the Black Law Dictionary (1) To remove (oneself) as Judge in a particular cast because of prejudice or a conflict of interest. (2) To challenge or object to (a judge) as being disqualified from hearing a case because.

Wherefore, Petitioner respectfully Request:

A. That this Court declare Petitioner's sentence and conviction void.

B. That this Court grant an evidentiary hearing, appoint counsel for your petitioner, and order the presence of your petitioner.

C. That this Court grant your petitioner a new trial and any and all relief the Court deems just and proper.

Verification

*Respectfully Submitted
Kwasi McKinney*

I, Kwasi A. McKinney, the petitioner herein, and in support of my Rule 37 Petition, after first being duly sworn, do hereby swear that the statements, matters, and things contained in my Rule 37 Petition are a true and accurate account to the best of my knowledge, information, and belief and for the purposes herein stated, set forth, and contained.

Kwasi McKinney

Petitioner, pro se

ADC # _____

State of Arkansas Lee County

Subscribed and sworn to before me, a Notary Public, on this 10 day of Dec 2019.

My Commission expires: 10-18-2028

Carrie Granville

Notary Public



I, Kwasi McKinney, petitioner herein, do certify that a copy of this petition has been served this 08 day of December, 2019, to the following by placing same in the U.S. Mail with sufficient postage affixed to ensure delivery:

Ryan Phillips, Prosecuting Attorney
Columbia County

[REDACTED]

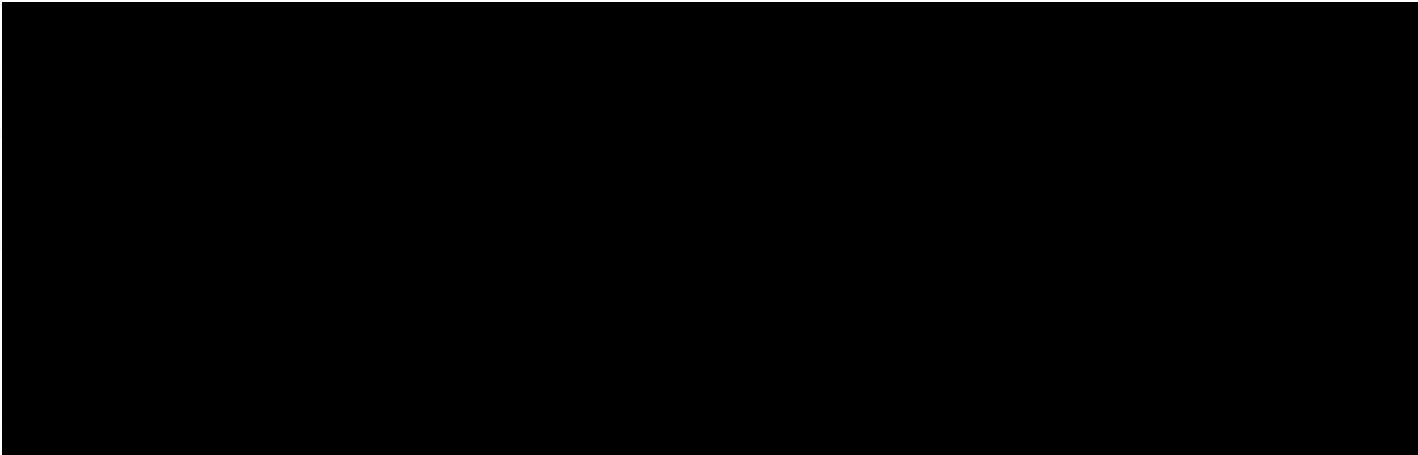
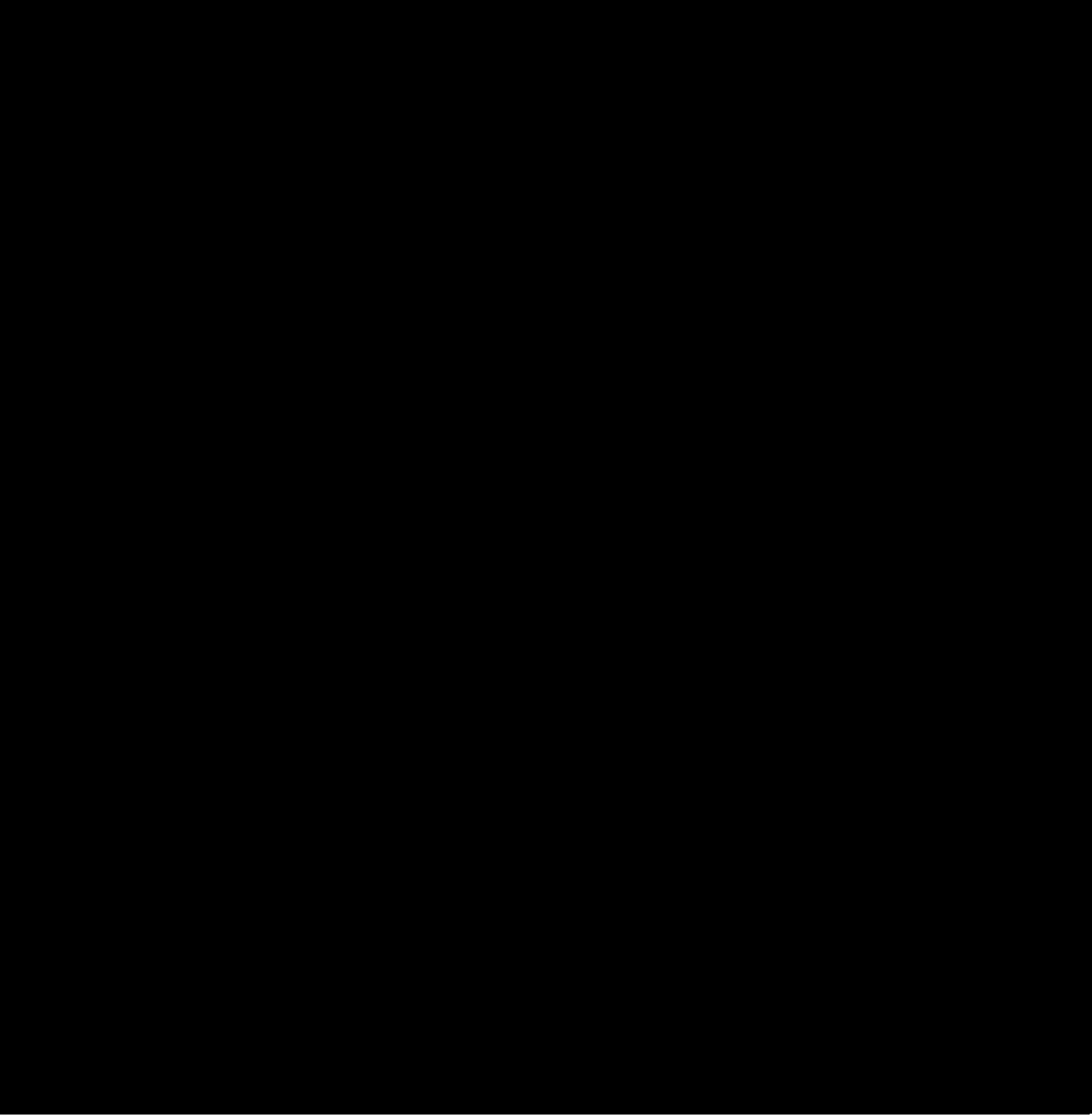
The Honorable David W. Talley, JR, Circuit Judge
Columbia County ~~County~~

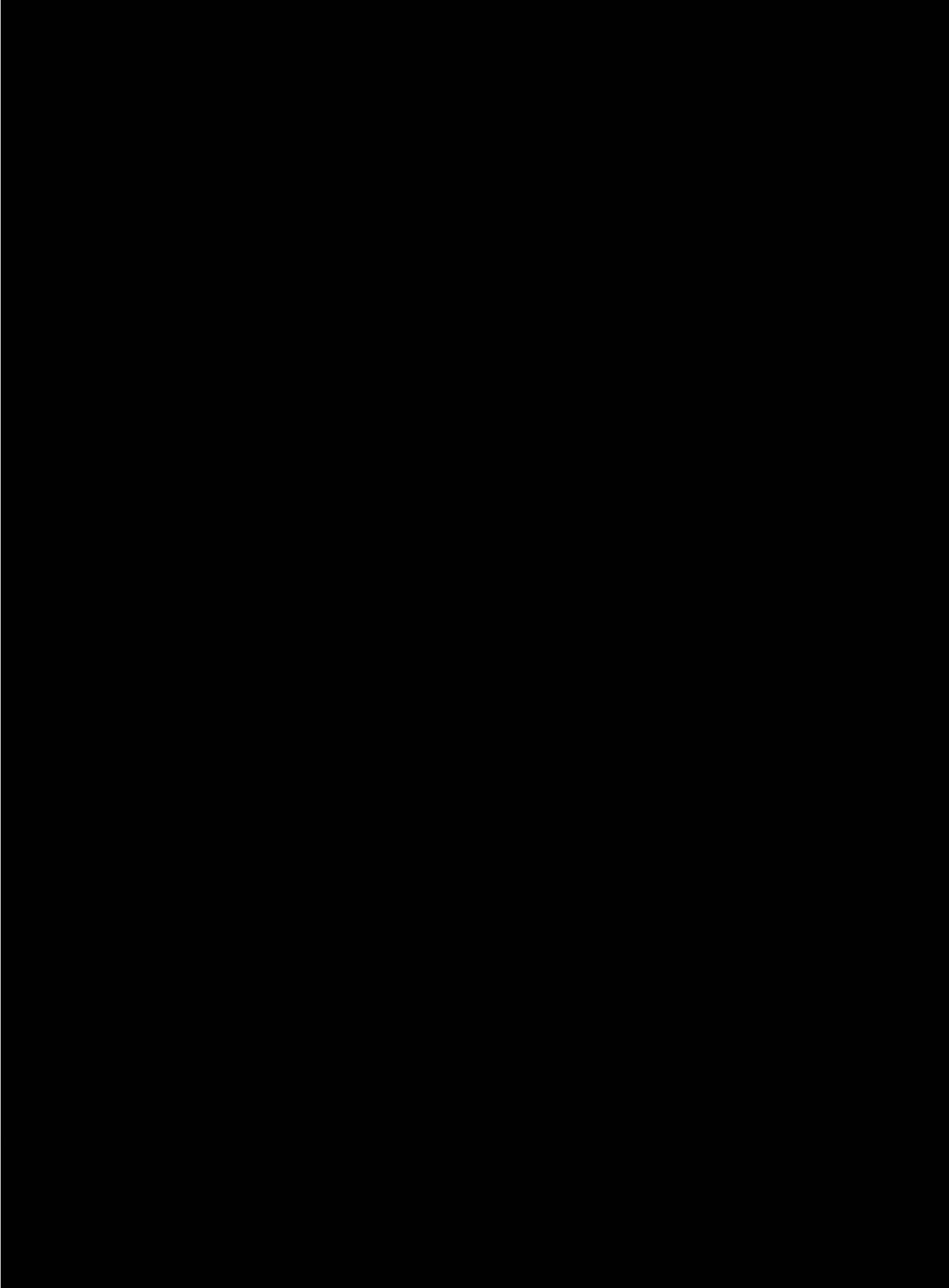
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Kwasi McKinney

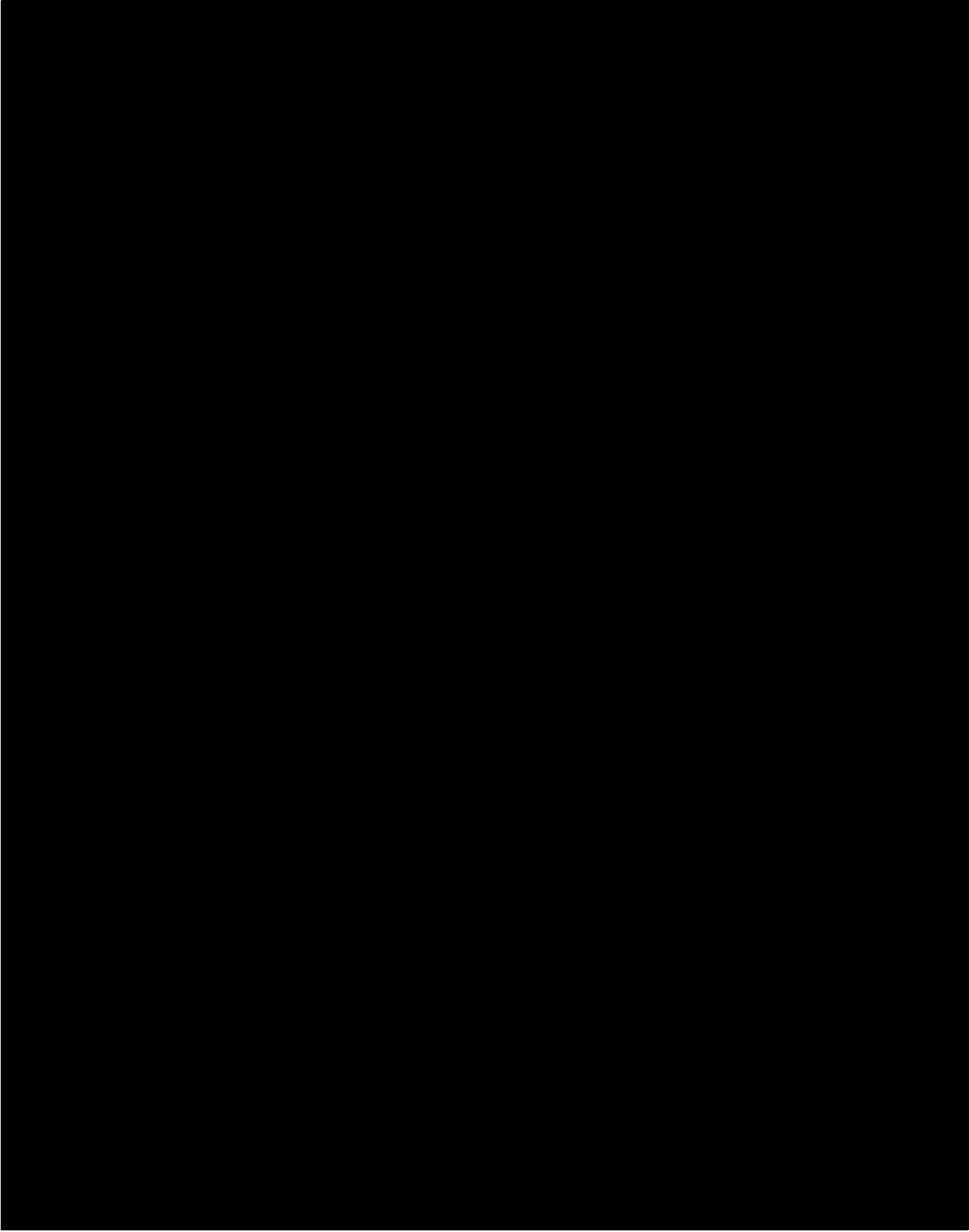
ADC # [REDACTED], pro se

(Attach "Motion for Transcript for Rule 37 Proceedings.")





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Transaction

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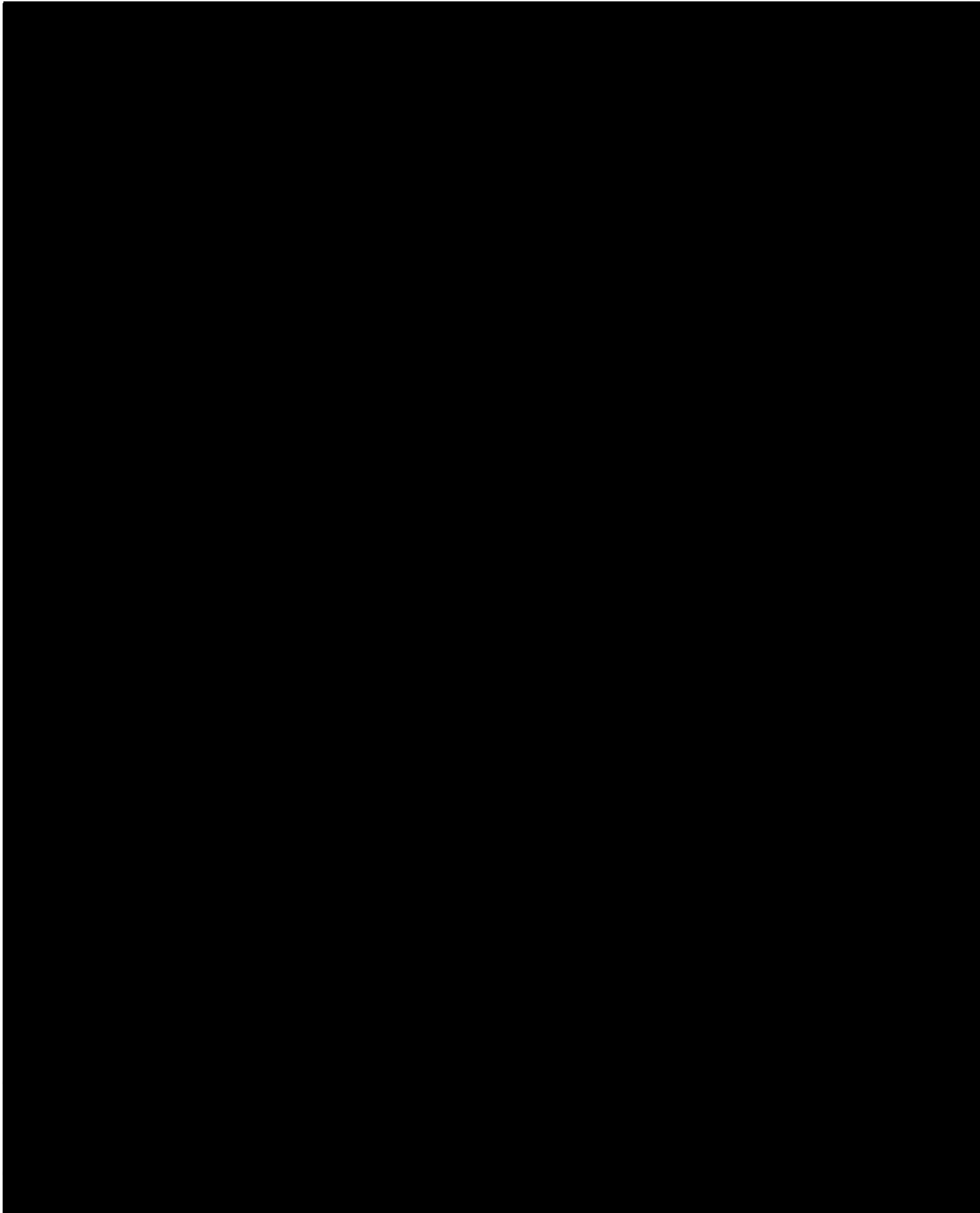
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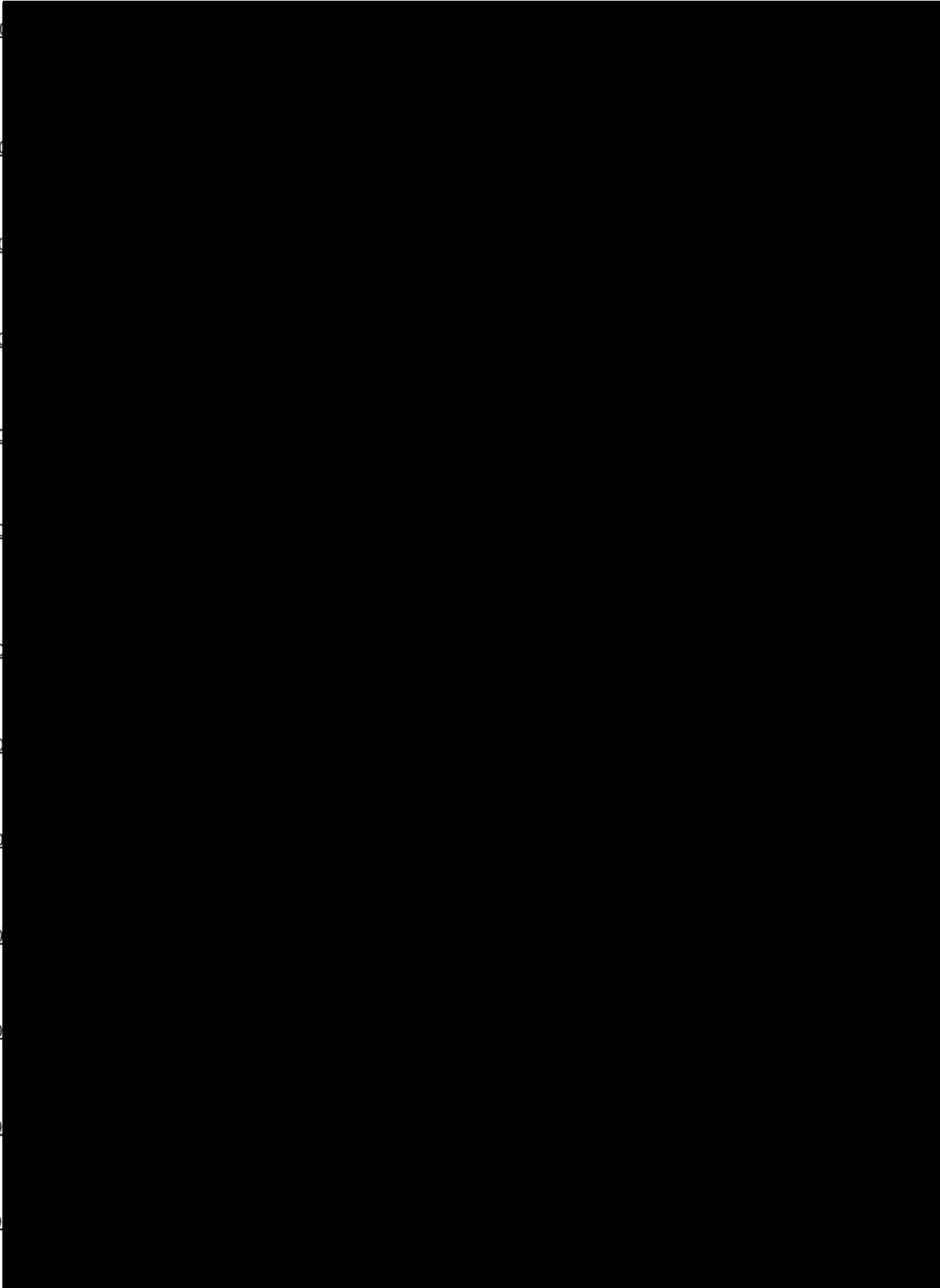


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Arkansas State Claims Commission

Re: Kwasi McKinney vs Arkansas Department of Correction
Claim No. 200909

Dear Commissioner,

An order was issued by the Claims Commission on October 20, 2023. If the Respondent don't file a notice of appeal or motion for reconsideration can my check be sent home to my kids. If so ^{the} ~~that~~ address is:

Kwasi McKinney
~~Address~~

[Redacted]

[Redacted]

Thank you in advance!

Arkansas
State Claims Commission

NOV 27 2023

RECEIVED



DEC 07 2023

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION RECEIVED

KWASI MCKINNEY ([REDACTED]) CLAIMANT

V. CLAIM NO. 200909

ARKANSAS DEPT. OF CORRECTIONS RESPONDENT
(DIVISION OF CORRECTIONS)

MOTION FOR/IN RESPONSE TO RECONSIDERATION

Comes now the Claimant, Mr. Kwasi McKinney, for his Motion in Response to Reconsideration, assertively deposes and states the following:

1) The Claimant would like to offer two copies of clear-cut evidence that has been a vital piece of evidence since the beginning of the discovery process. (See Attached Certificate and Cost of Transcript - Ex. # 16, 17a)

2) The Claimant also moves to introduce Books N Things receipts that were not listed on account sheet. The old receipts were lost. (See Attached Books N Things - Ex 1, 2)

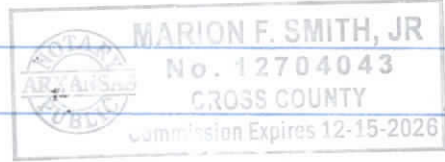
3) The Honorable Commissioner's that comprise the ruling authority of the Commission, issued a 460
(11)

meritorious "Amended Order" after having admitted to overlooking previous review of negligence and to correct unintentional error in its Jan. 3, 2023 decision. (See Attached copy of Amended Order Ex. 7-10)

4) The Respondent, ADC/DIVISION OF CORRECTION, by proxy of Thomas Burns, deliberately disregarded and blatantly neglected to justly adhere to the established mandatory regulations of rule 7.1 as specifically outlined in the Rules Handbook - "Motions for Reconsideration will only be entertained if they set forth new or additional evidence which was not previously available."

5) For these reasons and the reasons set forth in the Commission's Jan. 19, 2023 Order - the Claimant, Mr. Kwasi McKinney, prays that the Respondent's Motion for Reconsideration be deemed frivolous and futile attempt to undermine the presiding decisions rendered by the Commission.

STATE OF ARKANSAS)
COUNTY OF LEE)

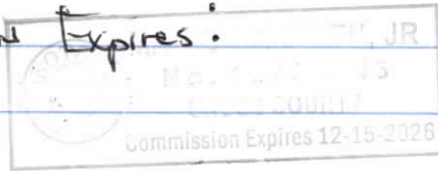


SUBSCRIBED AND SWORN TO BEFORE ME, a
Notary Public this 4 day of December 2023.

12-15-2026

M. F. Smith

My Commission Expires:



NOTARY

CERTIFICATE OF SERVICE

I, Mr. Kwasi McKinney, do hereby swear that on this 1 day of December 2023, I have served on the Respondent the Division of Corrections, through Attorney Mr. Thomas Burns at 6814 Princetons Pike; Pine Bluff, AR. 71602; a true copy of my Motion for Response to Respondent's Reconsideration by placing same in the U.S. mail with sufficient postage affixed to ensure delivery.

C E R T I F I C A T E

I, Jerri Gale Harrelson, Official Court Reporter for the Circuit/Chancery Court, 13th Judicial District of Arkansas, do hereby certify that I recorded the proceedings by Stenomask recording in the case of THE STATE OF ARKANSAS VERSUS KWASI ANDRADE MCKINNEY, Columbia County Circuit No. 2016-59-5, on April 16, 2018; before the Honorable David W. Talley, Jr., Circuit/Chancery Judge thereof, at Magnolia, Arkansas; that said recording has been reduced to a transcription by me, and the foregoing pages numbered one through 75 constitute a true and correct transcript along with all items received into evidence, of the proceedings held to the best of my ability.

Witness my hand this 3rd day of June, 2018.

Cost of Transcript: \$315.00



Jerri Gale Harrelson
JERRI GALE HARRELSON, CCR
Supreme Court Certified Reporter No.533

MY COMMISSION EXPIRES:
April 6, 2026.

JERRI GALE HARRELSON
ARKANSAS SUPREME COURT #533
CERTIFIED COURT REPORTER

* * * * *

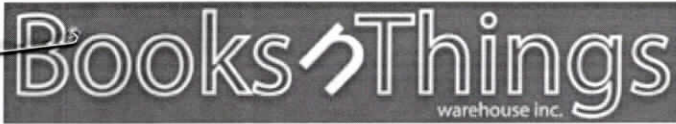
C E R T I F I C A T E

I, Jerri Gale Harrelson, Official Court Reporter for the Circuit/Chancery Court, 13th Judicial District of Arkansas, do hereby certify that I recorded the proceedings by Stenomask recording in the case of THE STATE OF ARKANSAS VERSUS KWASI ANDRADE MCKINNEY, Columbia County Circuit No. 2016-35-5, on November 29, 2016; before the Honorable David W. Talley, Jr., Circuit/Chancery Judge thereof, at Magnolia, Arkansas; that said recording has been reduced to a transcription by me, and the foregoing pages numbered one through 482 constitute a true and correct transcript along with all items received into evidence, of the proceedings held to the best of my ability.

Witness my hand this 6th day of February, 2017.

Cost of Transcript: \$2,033.20

Ex#17a



BOOKS N THINGS WAREHOUSE INC
PO Box 7330 - Shrewsbury, NJ 07702

PACKING SLIP

PO Box 7330 - Shrewsbury, NJ 07702-7330
Phone: (800) 681-2740 Fax: (800) 681-2741
www.mybntw.com

Account # [REDACTED] #: [REDACTED]
[REDACTED] or: [REDACTED]0 Date: 5/5/2022

2021-2022 MASTER CATALOG **Featuring Over 200 New Gift Items for All Ages!** ***Catalog Price is \$3.00***

SOLD TO:
KWASI MCKINNEY [REDACTED]

SHIP TO:
Arkansas
KWASI MCKINNEY [REDACTED] State Claims Commissio
[REDACTED]
[REDACTED]
[REDACTED]
DEC 07 2023
RECEIVED

BNTW ORDER NUMBER	PROCESSING AGENT	METHOD OF PAYMENT	PURCHASE ORDER #
106890	Sales Rep-4	Mixed Payment	

ITEM #	B/O	QTY	PRODUCT NAME	BNDG	CATEGORY	N/R	ISS/YR	UNIT PRICE	TOTAL
CT24223	<input type="checkbox"/>	1	BNTW 2022-2023 MASTER CATALOG	PB	CATALG			\$3.00	\$3.00
MZET12143	<input type="checkbox"/>	1	US Weekly Magazine	PB	MAGS	N	52	\$69.95	\$69.95
MZHO7475	<input type="checkbox"/>	1	Architectural Digest	PB	MAGS	N	11	\$7.00	\$7.00
MZCR10832	<input type="checkbox"/>	1	Bon Appetit	PB	MAGS	N	10	\$7.00	\$7.00
MZBF10719	<input type="checkbox"/>	1	Entrepreneur	PB	MAGS	N	8	\$7.00	\$7.00
MZBF10717	<input type="checkbox"/>	1	Fast Company (Business)	PB	MAGS	N	6	\$7.00	\$7.00
MZBF10718	<input type="checkbox"/>	1	Inc. (Business)	PB	MAGS	N	6	\$7.00	\$7.00
OT2136	<input type="checkbox"/>	1	** ALERNATE NEEDED		MISC	N	6	\$7.00	\$7.00
OT2136	<input type="checkbox"/>	1	** ALTERNATE NEEDED		MISC	N	4	\$7.00	\$7.00
MZFS10977	<input type="checkbox"/>	1	Harper's Bazaar	PB	MAGS	N	9	\$7.00	\$7.00
MZME11117	<input type="checkbox"/>	1	GQ (Gentlemen's Quarterly)	PB	MAGS	N	10	\$7.00	\$7.00
MZSR11211	<input type="checkbox"/>	1	The Red Bulletin (Sports/Travel/Arts/Music)	PB	MAGS	N	10	\$7.00	\$7.00

SHIPPING INSTRUCTIONS:
Dear Customer- Taste of Home and Watch! Are no longer available. Due to company policy we are unable to select the alternates for you. Enclosed is a list of magainzes on our special, please submit 2-4 alternates. Thank you!

MIXED PAYMENTS TOTALING \$150.04
\$150 CHECK
\$0.04 CREDIT ON ACCT



BOOKS N THINGS WAREHOUSE INC
PO Box 7330 - Shrewsbury, NJ 07702

PACKING SLIP

PO Box 7330 - Shrewsbury, NJ 07702-7330
Phone: (800) 681-2740 Fax: (800) 681-2741
www.mybntw.com

Account #: [REDACTED] # [REDACTED]
[REDACTED] or [REDACTED] 20 Date: 5/5/2022

2021-2022 MASTER CATALOG **Featuring Over 200 New Gift Items for All Ages!** ***Catalog Price is \$3.00***

→ *If Box is Checked, Item is on Back Order and will ship within 60 Days.
(Please make sure to notify us Immediately, if your address changes)*

MAGAZINE SUBSCRIPTION POLICIES: First Issues will arrive in 8-12 weeks (Normal Processing Time).
Change of Address (COA): Once you receive your first issue, it is the responsibility of the publisher(s) to handle all COA requests or delivery problems. ***Please adhere to the following recommendations to minimize the number of issues you will miss as a result of any address changes: 1) If you are moving/about to be transferred to a new facility, wait until you arrive at your new location prior to submitting a new order. 2) When you receive the first issue of a new subscription, locate the publisher's name, address, and phone number (which can be found near the first few pages of the magazine... usually below or near the Table of Contents). Make sure to note/save this information so that you can notify the publisher(s) directly of any address changes or other problems (such as Duplicate Issues). The publisher's are the ones who mail the magazine issues to you (NOT Books N Things Warehouse). Every COA may result in 2-3 missed issues.

Order Subtotal: \$142.95
S/H and Processing: \$3.00
NJ Sales Tax: \$0.00
4% Credit Card Fee: \$0.00
Order Total: \$145.95
Payment Applied: \$150.04

(Account Credit) or Amount Due: (\$4.09)

SHIPPING INSTRUCTIONS:

Dear Customer- Taste of Home and Watch! Are no longer available. Due to company policy we are unable to select the alternates for you. Enclosed is a list of magazines on our special, please submit 2-4 alternates. Thank you!

MIXED PAYMENTS TOTALING \$150.04
\$150 CHECK
\$0.04 CREDIT ON ACCT

466
(RV 12)

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY (ADC [REDACTED])

CLAIMANT

V.

CLAIM NO. 200909

ARKANSAS DIVISION OF
CORRECTION

RESPONDENT

AMENDED ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is a claim filed by Kwasi McKinney (the "Claimant") against the Arkansas Division of Correction (the "Respondent"). Also pending is Claimant's motion for summary judgment. At the hearing on October 13, 2022, Claimant proceeded *pro se*, and Thomas Burns appeared on behalf of Respondent. Based upon a review of the pleadings, as well as the argument of the parties and the law of the State of Arkansas, the Claims Commission hereby finds as follows:

1. Claimant filed his claim on March 4, 2020, seeking damages for lost property.
2. Respondent filed a motion to dismiss, which was denied by the Claims Commission on October 20, 2020. As part of that order denying the motion, the parties were instructed to begin discovery.
3. During discovery, the Claims Commission entered an order denying Respondent's motion to deem admitted requests for admission propounded to Claimant as well as Claimant's motion for summary judgment. The Claims Commission also entered an order denying Claimant's motion for injunction as well as Claimant's motion for sanctions related to Respondent's alleged failure to respond to the requests for admission and requests for production propounded by Claimant.

4. The Claims Commission sent the parties notice of hearing on June 22, 2022, which provided that, absent a showing of good cause, motions of any kind must be submitted in sufficient time to allow the motion to be fully briefed by September 1, 2022.

5. Claimant filed a motion for summary judgment on August 20, 2022. Respondent filed a response to the motion for summary judgment.

6. At the hearing, Claimant testified that he was removed from his cell and placed in isolation about three years ago. When Claimant's property was returned to him after he got out of isolation, items were missing, including his legal transcripts and books. The legal transcripts and legal books are the items about which he is most concerned. Claimant stated that he was unable to testify as he would like because the legal materials related to this claim had been taken prior to the hearing. On cross-examination, Respondent presented an F-841 form dated October 19, 2019. Claimant testified that it did not list all the property he had at the time of his isolation. Claimant testified he was unsure whether this was the form he submitted with his claim because someone had taken his legal materials. He also testified that an F-841 form dated November 22, 2019, was not like his other property forms where, under the legal mail entry, it said "bundle" instead of "one" because at the time of the incident, on October 19, 2019, he had bundles of personal mail and more than one legal transcript. Claimant pointed out that the form said he had zero regular "mail." He asked, "how could that be?" since he has been locked up for years. He further testified that he had "bundles and bundles" of legal mail at that time.

7. Upon a question from a commissioner, Claimant testified that he was missing his law journal, court rule books, trial transcripts, and a law dictionary, which were provided to him by his family. Claimant also testified he was missing an MP4 player. Claimant testified that his transcripts and legal books would cost \$3,500.00 to \$4,000.00 to replace.

8. With regard to Claimant's motion for summary judgment, the Claims Commission finds that it is untimely pursuant to the hearing letter, as Claimant's motion for summary judgment was not filed in sufficient time to allow the motion to be fully briefed by the parties by September 1, 2022. As such, the motion is DENIED.

9. The Claims Commission finds the testimony of Claimant to be persuasive and that Claimant raised questions about the reliability of the F-841 forms. Accordingly, and to correct the unintentional error in its January 3, 2023, decision, the Claims Commission finds that there is sufficient evidence of negligence on the part of Respondent to warrant an award in Claimant's favor. However, the Claims Commission further finds that Claimant was unable to present detailed testimony related to his damages because his legal materials were taken from him prior to the hearing. As such, the Claims Commission will provide Claimant with a copy of the claim file and will set a hearing to determine the amount of damages to be awarded.

10. The Claims Commission notes that Claimant submitted correspondence to the Claims Commission after the October 13, 2022, hearing, requesting that the Claims Commission order Respondent's employee to return Claimant's legal materials related to this claim. The Claims Commission must deny this request, as it does not have authority to grant such relief. However, to the extent that Respondent is able to return Claimant's legal materials to him prior to the damages hearing, the Claims Commission directs the parties to provide detailed notification of what has been returned.

IT IS SO ORDERED.

Courtney Baird

ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird

Henry C. Kinslow

ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow, Chair

Sylvester Smith

ARKANSAS STATE CLAIMS COMMISSION
Sylvester Smith

DATE: January 19, 2023

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. See Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$^{14,500}15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

October 23, 2023

Mr. Kwasi McKinney (ADC [REDACTED])
[REDACTED]
[REDACTED]

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602-9411

(via email)

Re: ***Kwasi McKinney v. Arkansas Division of Correction***
Claim No. 200909

Dear Mr. McKinney and Mr. Burns:

Enclosed please find an Order entered on October 20, 2023, by the Arkansas State Claims Commission. If you have any questions, please do not hesitate to contact my office.

Sincerely,

Mika Tucker

ES: msscott

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY (ADC [REDACTED])

CLAIMANT

V.

CLAIM NO. 200909

**ARKANSAS DIVISION OF
CORRECTION**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the "Commission") is a claim filed by Kwasi McKinney (the "Claimant") against the Arkansas Division of Correction (the "Respondent"). At the hearing on damages on September 22, 2023, Claimant proceeded *pro se*, and Thomas Burns appeared on behalf of Respondent. Based upon a review of the pleadings and filings, as well as the argument of the parties and the law of the State of Arkansas, the Commission hereby finds as follows:

1. Claimant filed his claim on March 4, 2020, seeking damages for lost property.
2. Respondent filed a motion to dismiss, which was denied by the Commission on October 20, 2020. As part of that order denying the motion, the parties were instructed to begin discovery.
3. During discovery, the Commission entered an order denying Respondent's motion to deem admitted requests for admission propounded to Claimant as well as Claimant's motion for summary judgment. The Commission also entered an order denying Claimant's motion for injunction as well as Claimant's motion for sanctions related to Respondent's alleged failure to respond to the requests for admission and requests for production propounded by Claimant.

4. A hearing on the claim was held on October 13, 2022. After the hearing, the Commission entered an amended order¹ on January 19, 2023, finding that there was sufficient evidence of negligence on the part of Respondent to warrant an award in Claimant's favor, but that Claimant was unable to present detailed testimony related to his damages because his legal materials were taken from him prior to the hearing. The order indicated that the Commission would provide Claimant with a copy of the claim file and would set a hearing to determine the amount of damages to be awarded.

5. At the hearing on damages, Claimant testified that he was seeking \$13,155.29 in damages. Claimant testified that \$3,155.29 was the value of the property that was lost. Claimant testified that he was asking for another \$10,000.00 for "emotional distress, mental anguish and pain and suffering" because he has a very important criminal case he is fighting. Claimant testified that he had "a hundred and fifty-four years" for a conviction where the drugs at issue were not his. Claimant testified that he was innocent in this case and that all the legal documents he had from 2016 to 2019 were lost. Claimant testified that the loss of trial transcripts, remand hearing transcripts and crime lab reports, which took him three years to obtain, has caused him "a lot of stress." Claimant testified that he has been trying to get the crime lab reports for four years since Respondent lost his property. Claimant testified that he lost an affidavit from the person who the drugs belonged to and that this made a court filing untimely. Claimant testified that before his property was lost, he was "getting good feedback on his appeals" and, after Respondent took his books and case files, he did not have "the knowledge." Claimant testified that he does not have correspondence from his attorneys. Claimant stated that his family has supported him and gotten him this far, but "these folks" took his property and "messed [him] around." Upon a question from

¹ The Commission's January 19, 2023, order also denied Claimant's motion for summary judgment, finding that the motion was untimely pursuant to the hearing letter.

DEC 07 2023

RECEIVED

a commissioner related to whether Claimant was physical injured, Claimant testified that he was injured because all of his petitions and appeals were denied. Upon a question from a commissioner, Claimant testified that the costs of his trial transcripts were \$2,033.22 and \$315.00. Upon a question from a commissioner, Claimant testified the approximate cost of his court rule books, law dictionary, law journal and MP4 content was in his claim form. Claimant testified that his main concern was his legal materials but he had about \$400.00 worth of other items that were lost. The chair commissioner noted that he did not see the approximate cost of the legal items in Claimant's claim form. Upon a question from a commissioner, Claimant testified that he did not have the receipts for his legal materials because they were lost with his property. Claimant testified that he remembered how much these things cost because he still had the catalogues that he used to order his legal books from. The chair commissioner noted that Claimant had indicated that he was seeking \$4,000 for legal books and materials but that Claimant indicated that the amount included Claimant's alleged value of his emotional distress. Claimant testified that the "Arkansas Court Rule Volume I" price was \$165, the Black's law dictionary price was \$149, the "Arkansas Court Rule Volume II" price was \$126.00, the "Prison Legal Guide: Post-Conviction" price was \$159.89, the "Federal Rules of Criminal Procedure" price was \$49.95, the prison litigation manual price was \$54.95, "pay the cite" book price was \$49.95, the "loophole" price was \$6.95, the "Tools of Argument" price was \$12.50, the "Jail House Lawyer Manual" price was \$16.95, and the "How to Sue Your Deadbeat Attorney" price was \$15.95. Claimant testified the total cost of his books and his transcripts was \$3,155.29.

6. On cross-examination, Claimant testified that he had a private attorney and did not have a public defender when he went to trial. Claimant testified that he did not have a public defender on his first direct appeal and the court appointed him an attorney on his second direct

appeal. Claimant testified that his “third appeal attorney” withdrew and “they” gave him another attorney. Claimant testified that he did not have an attorney at the “time all of his property got damaged.” Claimant testified that he paid for his transcripts. Respondent presented the “pink copy of Claimant’s [F-]841 [form]” as an exhibit, Claimant testified that it “looked like the one [he] had.” Respondent then presented “the white copy [of the F-841 form] that [Respondent] keeps” as an exhibit. Claimant testified that he did not get all the property back and that he signed the form “because she forced [him] to sign for it.” Claimant testified “you have to sign for [the property] before you even get it so [he] didn’t know what was in the property bag before [he] signed for it.” Claimant testified that he would have “gotten nothing” if he did not “sign for it.”

7. Claimant testified that the property form presented by Respondent showed he had “zero mail.” Claimant presented envelopes he testified “said April 2018; March 20, 2018... June ’18.” Claimant testified that these three pieces of mail show that a sanitation lady brought him his mail after cleaning his cell and that “the confiscation form is bogus.” Claimant asked, “if [he] has mail in [his] cell from 2016, 2017 [and] 2018, then why is it not documented on the confiscation form?” Claimant testified that he was winning his case until Respondent lost his property.

8. Respondent argued that Claimant has the burden of proving his damages beyond speculation and that proof of damages must be certain. Respondent argued that Claimant had no receipts and nothing showing what his damages are. Respondent argued that “it is all pure speculation.” Respondent argued that Claimant could have gotten book receipts off EOMIS and that he has not done that. Respondent argued that Claimant provided only conjecture.

9. Claimant argued that inmates cannot write to Respondent and ask for certain documents. Claimant argued that Respondent could have pulled records from EOMIS to prove that

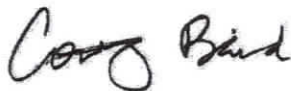
he was “lying” about the prices and that Respondent could not disprove the amount of his trial transcripts.

10. The Commission finds that Claimant’s testimony was credible and unrefuted. The Commission further finds that Claimant’s testimony related to his memory of the costs of the transcripts and his testimony regarding the specific book prices listed in legal materials catalogue was not speculative.


11. The Commission notes that Claimant seeks damages for pain and suffering and mental anguish, as well as actual damages. However, pain and suffering and mental anguish damages are not recoverable in negligence actions where a claimant has not suffered physical injury. *See Wright v. Husband*, 193 Ark. 347, 99 S.W.2d 583, 585 (1936).

12. For these reasons and for the reasons set forth in the Commission’s January 19, 2023, order, the Commission AWARDS Claimant \$3,155.29 and directs the Commission clerk to issue a voucher in payment thereof.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, Chair



ARKANSAS STATE CLAIMS COMMISSION
Sylvester Smith

DATE: October 20, 2023

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

Mika Tucker

From: Mika Tucker
Sent: Monday, December 18, 2023 9:19 AM
To: Thomas Burns (DOC)
Subject: HEARING SCHEDULED: Kwasi McKinney v. ADC, Claim No. 200909
Attachments: McKinney v. ADC, 200909 hearing letter (motions).pdf

Hi, Thomas. Please see attached.

Thanks,
Mika

Mika Tucker
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2818

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

December 18, 2023

Mr. Kwasi McKinney (ADC [REDACTED])
[REDACTED]
[REDACTED]

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602-9411

(via email)

RE: ***Kwasi McKinney v. Arkansas Division of Correction***
Claim No. 200909

Dear Mr. McKinney and Mr. Burns,

The Claims Commission has scheduled a hearing on any pending motions for **Thursday, January 18, 2024**, beginning at 8:45 a.m. All parties will attend via Zoom. The Zoom invitation is enclosed.

As this is a motions hearing, no prehearing materials are requested.

Sincerely,

Mika Tucker

ES: mtucker

Kathryn Irby -- Claims Commission is inviting you to a scheduled Zoom meeting.

Topic: Claims Commission -- hearings

Time: Jan 18, 2024 09:00 AM Central Time (US and Canada)

Join Zoom Meeting

<https://us06web.zoom.us/j/87348644534?pwd=UnAvWmlBVVA4VnNuMVB6WFpuclRodz09>

Meeting ID: 873 4864 4534

Passcode: BZ1fnd

One tap mobile

+16469313860,,87348644534#,,,,*299333# US

+19294362866,,87348644534#,,,,*299333# US (New York)

Dial by your location

- +1 646 931 3860 US
- +1 929 436 2866 US (New York)
- +1 301 715 8592 US (Washington DC)
- +1 305 224 1968 US
- +1 309 205 3325 US
- +1 312 626 6799 US (Chicago)
- +1 360 209 5623 US
- +1 386 347 5053 US
- +1 507 473 4847 US
- +1 564 217 2000 US
- +1 669 444 9171 US
- +1 669 900 6833 US (San Jose)
- +1 689 278 1000 US
- +1 719 359 4580 US
- +1 253 205 0468 US
- +1 253 215 8782 US (Tacoma)
- +1 346 248 7799 US (Houston)

Meeting ID: 873 4864 4534

Passcode: 299333

Find your local number: <https://us06web.zoom.us/u/kdJNKs5RvA>

Mika Tucker

From: Mika Tucker
Sent: Tuesday, January 16, 2024 9:42 AM
To: Thomas Burns (DOC)
Cc: Kathryn Irby
Subject: HEARING REMOVED: McKinney v. ADC, Claim No. 200909
Attachments: CORR McKinney v. ADC --200909.pdf

Hi, Thomas. Please see the attached correspondence. Thank you.
-Mika

Mika Tucker
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2818

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

January 16, 2024

Mr. Kwasi McKinney (ADC [REDACTED])
[REDACTED]
[REDACTED]

Mr. Thomas Burns
Arkansas Division of Correction
6814 Princeton Pike
Pine Bluff, Arkansas 71602-9411

(via email)

Re: ***Kwasi McKinney v. Arkansas Division of Correction***
Claim No. 200909

Dear Mr. McKinney and Mr. Burns,

The Claims Commission has removed the motion hearing in above-referenced claim from the docket. The Claims Commission will review the pending motion and enter an order soon.

Our office asks the ADC to please hand-deliver a copy of this letter to Mr. McKinney as soon as possible so that he will be aware of the removal of the hearing prior to January 18, 2024.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Mika Tucker

ES: mtucker

Mika Tucker

From: Misty Scott on behalf of ASCC Pleadings
Sent: Monday, January 22, 2024 3:39 PM
To: Thomas Burns (DOC)
Cc: ASCC Pleadings; Mika Tucker
Subject: ORDER: Kwasi McKinney v. ADC, Claim No. 200909
Attachments: Kwasi McKinney v. ADC4.pdf; Kwasi McKinney-order6.pdf

Thomas:

Please see attached. Contact Mika Tucker with any questions.

Thank you,

Misty

Misty Scott
Arkansas State Claims Commission

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

January 22, 2024

Mr. Kwasi McKinney (ADC [REDACTED])
[REDACTED]
[REDACTED]

Re: ***Kwasi McKinney v. Arkansas Division of Correction***
Claim No. 200909

Dear Mr. McKinney:

Enclosed please find an Order entered on January 18, 2024, by the Arkansas State Claims Commission. If you have any questions, please do not hesitate to contact my office.

Sincerely,

Mika Tucker

ES: msscott

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY (ADC [REDACTED])

CLAIMANT

V.

CLAIM NO. 200909

**ARKANSAS DIVISION OF
CORRECTION**

RESPONDENT

**ORDER ON RESPONDENT'S
MOTION FOR RECONSIDERATION**

Now before the Arkansas State Claims Commission (the “Commission”) is a motion filed by the Arkansas Division of Correction (the “Respondent”) for reconsideration of the Commission’s October 20, 2023, order awarding Kwasi McKinney (the “Claimant”) \$3,155.29 in damages. Based upon a review of the claim file, including Respondent’s motion, and the law of the State of Arkansas, the Commission hereby finds as follows:

1. Claimant filed his claim on March 4, 2020, seeking damages for lost property.
2. Respondent filed a motion to dismiss, which was denied by the Commission on October 20, 2020.
3. Following October 13, 2022, and September 22, 2023, hearings, the Commission entered an order awarding Claimant \$3,155.29 in damages.
4. Respondent subsequently filed the instant motion for reconsideration, arguing that it was submitting new and additional evidence not available at the hearing.
5. Claimant responded in opposition to Respondent’s motion.
6. In analyzing a motion for reconsideration, Rule 7.1 of the Commission Rules and Regulations states that motions for reconsideration “will only be entertained if they set forth new or additional evidence which was not [previously] available”

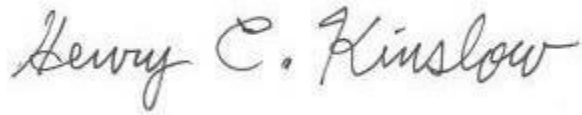
7. The Commission finds that Respondent's motion does not set forth new or additional evidence not previously available.

8. The Commission specifically finds Respondent's argument that Claimant failed to present evidence to be entirely incorrect. Testimony *is* evidence, and in the Commission October 20, 2023, order, it found Claimant's testimony to be both credible and unrefuted. *See* Order at ¶ 10. The Commission notes that Claimant's failure to produce receipts does not automatically defeat Claimant's claim, especially in a loss of property claim. The Commission further notes that Respondent presented no witness testimony at either hearing, despite having a witness listed on its prehearing materials (Angela Jenkins). While Respondent is free to determine its own hearing strategy, it would be improper for the Commission to allow Respondent to present arguments and evidence in a motion for reconsideration that could have been but were not presented at the hearing, including inmate banking information and information about Claimant's appellate cases.¹

9. As such, Respondent's motion for reconsideration is DENIED, and the October 20, 2023, Commission order remains in effect.

¹ Regarding the appellate cases, the Commission notes that the documents attached to Respondent's motion for reconsideration as Exhibits B and C relates to filings submitted in other courts, all of which appear to have been filed prior to the Commission's final hearing.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, Chair



ARKANSAS STATE CLAIMS COMMISSION
Sylvester Smith

DATE: January 18, 2024

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

Mika Tucker

From: Thomas Burns (DOC)
Sent: Monday, February 5, 2024 12:03 PM
To: ASCC Pleadings
Subject: Kwasi McKinney v ADC 200909
Attachments: 2715_001.pdf

Notice of Appeal

Thank you,
-TB



THOMAS BURNS
DEPUTY SHERIFF GENERAL SUPERVISOR
Arkansas Department of Corrections
844 Prisonside Pkwy
Fayetteville, Arkansas 72703
Phone: (479) 247-4100 ext. 2000
Email: tburns@adoc.state.ar.us
Attachments: 2715_001.pdf

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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KWASI MCKINNEY [REDACTED]

CLAIMANT

v.

NO. 200909

**ARKANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF CORRECTION**

RESPONDENT

NOTICE OF APPEAL

Comes now the Respondent, Division of Correction (ADC) by and through counsel, Thomas Burns, and for notice, states:

1. That notice is hereby given that the ADC appeals from the Order of the Arkansas State Claims Commission (ASCC) made on the 18th day of January 2024.
2. This appeal is taken to the Claims Subcommittee of the Joint Budget Committee, and the ADC hereby requests and directs that the ASCC file all documents pertaining to this case with the Claims Subcommittee.

Respectfully submitted,



Thomas Burns (02006)
Legal Division

Division of Correction
6814 Princeton Pike
Pine Bluff, AR 71602
(870) 267-6845 Office
thomas.burns@arkansas.gov

CERTIFICATE OF SERVICE

I certify that a copy of the above pleading has been served this 5th day of February 2024, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Kwasi McKinney



A handwritten signature in blue ink, consisting of stylized, overlapping loops and lines.

Thomas Burns

Arkansas State Claims Commission

1-16-24

RE: Kwasi McKinney v. Arkansas Division of Correction
Claim No. 200909

Arkansas
State Claims Commission

FEB 26 2024

RECEIVED

Dear Claims Commission,

I recieved a letter on December 18, 2023 advising me that a hearing will be set on ~~any pending motions~~ on January 18, 2024 via Zoom, on pending motions.

I recieved a letter on January 16, 2024 advising me that the motion hearing was removed.

Could the commission please advise me what pending motions I have in the above-referenced claim.

Could the commission please give me an update on all ~~pending~~^{pending} action in the above-referenced claim.

Kwasi McKinney