

F15

ARKANSAS STATE CLAIMS COMMISSION

NOV 13 2012

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Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

- Mr. Mrs. Ms. Miss

Brian Koontz, #115260 Claimant

vs.

State of Arkansas, Respondent Dept. of Correction

Do Not Write in These Spaces Claim No. 13-0406-CC Date Filed November 13, 2012 Amount of Claim \$ 73.37 Fund DOC

Loss of Property

COMPLAINT

Brian Koontz, #115260, the above named Claimant, of PO Box 600, Grady, AR 71644

Arkansas 71644 County of Lincoln represented by N/A

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

State agency involved: Arkansas Dept. of Corrections (Tucker Max) Amount sought: \$ 73.32

Month, day, year and place of incident or service: June 9, 10 2012 Tucker Maximum Security Unit Explanation: On June 9, 2012, Claimant was removed from general population to isolation. CO II J. Powell and Sgt. M. Adom went to cell 1-37 to do an inventory and pack-up my personal property. Upon doing this inventory they confiscated items that Claimant had purchased thru units commissary or received thru infirmary sick call procedure (See attached 987 form). Per policy, Claimant should have been allowed to obtain above items & send them home - Destroy items. Defendant AOC took Claimant's property without allowing him any options. Claimant has tried to obtain this property, but has been denied (See attached grievance).

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? (Yes) when? June 22nd 2012; to whom? F. Piggee Problem Solver

: and that the following action was taken thereon: N/A

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

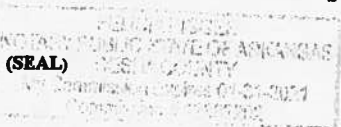
and that the nature thereof is as follows: (Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

: 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 verify believes that they are true.

Mr. Brian Koontz (Print Claimant/Representative Name) Mr. Brian Koontz (Signature of Claimant/Representative)

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



on this 08 day of November 2012 (Date) (Month) (Year)

Allicia Piggee (Notary Public)

SF1- R7/99

My Commission Expires: 01 31 2014 (Month) (Day) (Year)

Kelley / Max

LEVEL GRIEVANCE FORM (Attachment I)

RECEIVED JUN 28 2012

FOR OFFICE USE ONLY	
GRV. #	VSM12-2504
Date Received:	07-06-12
GRV. Code #:	505

Center VSM

Name Mr. Morris Koontz

ADC# 119260 Brks # 673 Job Assignment _____

6.21.12 (Date) STEP ONE: Informal Resolution

7.3.12 (Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)
If the issue was not resolved during Step One, state why: _____

_____ (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 a serious nature). If you marked yes, give this completed form to the designated problem-solving staff, who will sign the attached emergency receipt. If an Emergency, state why: What does the Major have to do with ME getting property that I paid for?

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): CAME to this unit on 6.10.12 didn't receive personal property til 6.21.12. Upon receiving property noticed items missing ie personal mail, medical products and other items confiscated during the process of gathering property would like these items returned from MAX unit so I can send home. Property packed by Sgt M. Adam & SGT Powell and allegedly furnished over to Sgt N. Kelley Tucker MAX Property room Supervisor. I have copy of 401 form of certain items missing need all returned to my person

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TO
SEP 10 2012

INMATE GRIEVANCE SUPERVISOR
ADMINISTRATION BUILDING

MBKE

6.22.12

Inmate Signature

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 _____ (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 _____

Piggee 39936 [Signature] 06-07-12
PRINT STAFF NAME (PROBLEM SOLVER) ID Number Staff Signature Date Received

Describe action taken to resolve complaint, including dates: According to Sgt. Kelly, she will have to get with the Major concerning your property.

[Signature] 06-03-12
Staff Signature & Date Returned

MBKE 7.3.12
Inmate Signature & Date Received

This form was received on 7/5/12 (date), pursuant to Step Two. Is it an Emergency? no (Yes or No). Staff Who Received Step Two Grievance: [Signature] Date: 7/5/12

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

CB06-613
673

IGTT410
3GS

Attachment III

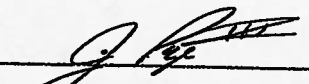
INMATE NAME: Koontz, Morris B. ADC #: 115260A GRIEVANCE #: VSM12-02504

WARDEN/CENTER SUPERVISOR'S DECISION

In response to your grievance: Inmate Koontz, you state in your complaint, "Came to this unit on 6/10/12 didn't receive personal property til 6.21.12. Upon receiving property noticed items missing i.e. personal mail, medical products and other items confiscated during the process of gathering property would like these items returned from Max unit so I can send home. Properly packed by Sgt M Odom & CO II Powell and allegedly turned over to Sgt N Kelley Tucker Max properly room supervisor. I have copy of 401 form of certain items missing need all returned to my person"

Sgt. J. Price, Property Officer - VU & VSM, has provided Inmate Personal Property Inventory Record sheets. One dated 06/10/2012 and signed by you from the Maximum Security Unit plus one from Varner Supermax dated and signed by you on 06/21/2012. Both Property Sheets state "I hereby certify that all of my property is listed on this inventory and disposition of all property listed on the inventory is correct. I further state that I do not have in my possession the legal materials belonging to any other inmate".

Therefore, I find this issue without merit.



Signature of Warden/Supervisor or Designee

dlw

Title

8/31/12

Date

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INMATE'S APPEAL

INMATE GRIEVANCE SUPERVISOR
ADMINISTRATION BUILDING

If you are not satisfied with this response, you may appeal this decision within five working days by filling in the information requested below and mailing it to the appropriate Chief Deputy/Deputy/Assistant Director along with the Unit Level Grievance Form. Keep in mind that you are appealing the decision to the original grievance. Do not list additional issues, which are not part of your original grievance as they will not be addressed. Your appeal statement is limited to what you write in the space provided below.

WHY DO YOU DISAGREE WITH THE ABOVE RESPONSE?

I signed for property that was issued to me by Sgt Price
Not property that was taken by Sgt. Odom. COLL POWELL
2 different phases of the trade. the items that

Sgt. Price GAVE ME WARE completed on totally
different form than one Odom & Powell did.
Also if I received all property why Sgt Kelley
respond as to she has to get with Major
Concerning my property?

Mr. MBK2
Inmate Signature

115260
ADC#

9-4-12
Date

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SEP 10 2012

INMATE GRIEVANCE SUPERVISOR
ADMINISTRATION BUILDING

INMATE NAME: Koontz, Morris B.

ADC #: 115260

GRIEVANCE#: VSM12-02504

CHIEF DEPUTY/DEPUTY/ASSISTANT DIRECTOR'S DECISION

You allege that upon your arrival to VSM from Maximum Security Unit some of your personal property items were missing.

Based on the Warden's response in which he states in part, "Sgt. J. Price, Property Officer - VU & VSM, has provided Inmate Personal Property Inventory Record sheets. One dated 06/10/2012 and signed by you from the Maximum Security Unit plus one from Varner Supermax dated and signed by you on 06/21/2012. Both Property Sheets state "I hereby certify that all of my property is listed on this inventory and disposition of all property listed on the inventory is correct. I further state that I do not have in my possession the legal materials belonging to any other inmate".

Therefore, I find this issue without merit."

I find that I concur with the unit's response.

Appeal denied

17 M7

Director

10.23.12
Date

**STATE OF ARKANSAS - DEPARTMENT OF CORRECTION
CONFISCATED FORM - AREA OR PERSON**

(Check One) Inmate Visitor Staff Area

Unit: MAX Building or Area: _____ Barracks _____ Cell _____

Date and Time of Search: 9 / 1 June 112 11:45 pm am

Officer(s) Conducting Search: (Print) Col. Powell

Officer(s) Conducting Search: (Signature) Col. Powell

Inmate Name: _____ ADC #: _____

Articles Seized (description and number of items):

Number	Description
1	1 jar of I.C. paraffin butter / 1 comb / 1 handker
5	5 bottles of Fuzura / 100 nail clippers
Asst	Mayo and mucial / eye tissues
2	2 bottles of spiers / white shoe polish

Reason Seized: Excess/Unauthorized Property Disciplinary/Criminal Evidence

Other _____

Inmate Signature: refused to sign () Refused to Sign

Area/Shift/Supervisor: (Signature) Sgt. M. Doherty

Disposition of Contraband: Placed in property box

Copy Delivered to Inmate: Date: 10 June Time: 1:45 AM

Delivered By: (Signature) Col. Powell

Disciplinary Written: () No () Yes By: _____

Articles may be mailed to: _____

Inmate authorizes deduction of postage from pen store account:

To () Yes Inmate Signature: _____

STATE OF ARKANSAS - DEPARTMENT OF CORRECTION
 CONFISCATED FORM - AREA OR PERSON

F-401

(Check One) Inmate Visitor Staff Area

Unit: M. 10 Building or Area: Pop Barracks Cell

Date and Time of Search: 9 June 12 11:15 pm am

Officer(s) Conducting Search: (Print) Sgt. M. Deaton / Cpl. J. Powell

Officer(s) Conducting Search: (Signature) Sgt. M. Deaton / Cpl. J. Powell

Inmate Name: Acosta, M ADC #: 11526

Articles Seized (description and number of items):

Number	Description
1	Wool Cap
1	1 roll of Tape One black, 1 white
1	1 5' container of dib balance
1	1 box of Fruit drinks (powered)
1	1 box of Fruit drinks (powered)

Reason Seized: Excess/Unauthorized Property Disciplinary/Criminal Evidence

Other _____

Inmate Signature: [Signature] () Refused to Sign

Area/Shift/Supervisor: (Signature) Sgt. M. Deaton

Disposition of Contraband: placed in property R

Copy Delivered to Inmate: Date: 10 June 12 Time: 1:45 A-

Delivered By: (Signature) Cpl. J. Powell

Disciplinary Written: () No () Yes By: _____

Articles may be mailed to: _____

Inmate authorizes deduction of postage from pen store account:
 () No () Yes Inmate Signature: _____

To be completed by UPCO

Destruction Date: 1 / 1

UPCO: (Signature) _____ Witnessing Staff: (Signature) _____

Distribution - White-Remains with Contraband; Yellow- Institutional File; Pink-Inmate Copy
 (To Be Printed On NCR Paper)

F-401

Revised 8/28/2006

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

BRIAN KOONTZ (ADC 115260)

CLAIMANT

V.

NO. 13-0406-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

ANSWER

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

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

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

Respectfully submitted,
Department of Correction Office of Counsel

Lisa Mills Wilkins

LISA MILLS WILKINS Ark. Bar #87190

Attorney Supervisor
Post Office Box 8707
Pine Bluff, AR 71611
(870)267-6844 Office
(870)267-6373 Facsimile

ARKANSAS STATE
CLAIMS COMMISSION

DEC 12 2012

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CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 10 day of December, 2012, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

Brian Koontz (ADC 115260)
Varner Supermax Unit
PO Box 400
Grady, AR 71644-0400

Lisa Mills Wilkins
LISA MILLS WILKINS Ark. Bar #87190

JAN 30 2013

RECEIVED CLAIMANT

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

BRIAN KOONTZ (ADC#115260)

V. NO. 13-0406-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

MOTION TO DISMISS

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

1. Claimant has filed an action seeking \$73.37 for loss of some property items,
2. Claimant is incarcerated for 62 years for three (3) counts of rape. On June 9, 2012, Claimant was being locked up in isolation after he lured a female correctional officer to the chapel where he attempted to sexually assault her. She was able to call on her radio for assistance and officers apprehended him there. Due to the circumstances Claimant was not afforded the opportunity to pack his property before being placed in isolation. He was charged with Out Of Place Of Assignment, Rape or Forced Sex, Act with Staff or Inmate, Assault - Attempt or Threat upon Staff, Failure To Obey Order Of Staff, and Any Felony Act Or Misdemeanor and found guilty of all the charges.
3. The items confiscated are shown in Exhibit "A" pages 1-2. Of these items, only the tea, onion seasoning, lip chapstick, and seven (7) Hawaiian Punch packs are sold on the commissary. The wave cap is contraband and will be destroyed. The remaining items are not sold on the commissary.
4. Of the previously mentioned four (4) items, only one (1) Hawaiian Punch is noted as being purchased by Claimant since April 22, 2011 - over one year before the confiscation date! If claimant can provide commissary receipts by Wednesday, February 13, 2013, for the remaining six (6) Hawaiian Punch drinks, tea, lip chapstick, and onion seasoning, those will be returned to Claimant; otherwise, they will be destroyed as the product of trafficking and trading.
5. Respondent moves that the commission dismiss this claim which is proper when there are no facts upon which relief can be granted. ARCP 12(B)(6). Claimant can show no facts upon which he is entitled to relief; therefore, this claim should be dismissed.

Respectfully submitted,
Department of Correction
Office of Counsel

Lisa Mills Wilkins
LISA MILLS WILKINS Ark. Bar #87190
Attorney Supervisor

Post Office Box 8707
Pine Bluff, AR 71611
(870)267-6844 Office
(870)267-6373 Facsimile

CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served this 28 day of January, 2013, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

BRIAN KOONTZ (ADC#115260)
Varner Supermax Unit
P. O. Box 600
Grady, AR 71644-0600

Lisa Mills Wilkins
LISA MILLS WILKINS Ark. Bar #87190

F-401

STATE OF ARKANSAS - DEPARTMENT OF CORRECTION
CONFISCATED FORM - AREA OR PERSON

(Check One) Inmate Visitor Staff Area

Unit: MAX Building or Area: _____ Barracks _____ Cell _____

Date and Time of Search: 9 June 11 11:45 am

Officer(s) Conducting Search: (Print) Col. J. Powell

Officer(s) Conducting Search: (Signature) Col. J. Powell

Inmate Name: _____ ADC #: _____

Articles Seized (description and number of items):

Number	Description
1	Jar of J.F. peanut butter / 1 - comb w/ handle
5	bottles of f-usure / 700 nail clippers
ASST	Mayo and mustard / eye tweezers
3	Bottles of spices / white shoe polish

Reason Seized: Excess/Unauthorized Property Disciplinary/Criminal Evidence

Other _____

Inmate Signature: refused to sign () Refused to Sign

Area/Shift/Supervisor: (Signature) Sgt. M. DeW

Disposition of Contraband: Placed in property RM

Copy Delivered to Inmate: Date: 10 June Time: 1:45 AM

Delivered By: (Signature) Col. J. Powell

Disciplinary Written: () No () Yes By: _____

Articles may be mailed to: _____

Inmate authorizes deduction of postage from pen store account:
() No () Yes Inmate Signature: _____

To be completed by UPCO

Destruction Date: _____

UPCO: (Signature) _____ Witnessing Staff: (Signature) _____

Distribution - White-Remains with Contraband; Yellow- Institutional File; Pink-Inmate Copy
(To Be Printed On NCR Paper)

F-401

Revised 8/28/2006

F-401

STATE OF ARKANSAS - DEPARTMENT OF CORRECTION
CONFISCATED FORM - AREA OR PERSON

(Check One) Inmate _____ Visitor _____ Staff _____ Area _____
Unit: Max Building or Area: 101 Barracks 1 Cell 37
Date and Time of Search: 9 June 12 11:15 pm: am
Officer(s) Conducting Search: (Print) Sgt. M. Olson Col. J. Powell
Officer(s) Conducting Search: (Signature) Sgt. M. Olson Col. J. Powell
Inmate Name: Koontz, M ADC #: 115260

Articles Seized (description and number of items):

Number	Description
1	Wave Cap
1 box	Green Tea / 5 containers of 2lb balam
1	1/4 box of 2 dominos / 4 small bottles of hand lotion
1	1/2 Fruit drinks (powered)

Reason Seized: Excess/Unauthorized Property _____ Disciplinary/Criminal Evidence
Other _____

Inmate Signature: [Signature] () Refused to Sign

Area/Shift/Supervisor: (Signature) Sgt. M. Olson

Disposition of Contraband: placed in property R

Copy Delivered to Inmate: Date: 10 June 12 Time: 1:45 AM

Delivered By: (Signature) Col. J. Powell

Disciplinary Written: () No () Yes By: _____

Articles may be mailed to: _____

Inmate authorizes deduction of postage from pen store account:
() No () Yes Inmate Signature: _____

To be completed by UPCO

Destruction Date: _____

UPCO: (Signature) _____ Witnessing Staff: (Signature) _____

Distribution - White-Remains with Contraband: Yellow- Institutional File; Pink-Inmate Copy
(To Be Printed On NCR Paper)
F-401 Revised 8/28/2006

12
A 2 of 2

STATE CLAIMS COMMISSION OPINION

Amount of Claim \$ 73.37

Claim No. 13-0406-CC

Brian Koontz, #115260 Claimant vs. Department of Correction Respondent
Attorneys Pro se Claimant Lisa Wilkins, Attorney Respondent
Date Filed November 13, 2012 Type of Claim Loss of Property

FINDING OF FACTS

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

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

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

Date of Hearing March 7, 2013

Date of Disposition March 7, 2013

Handwritten signatures and printed names: Chairman, Bill Hancock Commissioner, and another Commissioner.

13

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

STATE CLAIMS COMMISSION

Brian Koontz-claimant

pro se

Claim No. 13-406-CO

#115240

Vs.

ARKANSAS STATE
CLAIMS COMMISSION

APR 02 2013

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Dept. of Corrections - Respondent

LISA Wilkins - Attorney

Date Filed Nov. 13, 2012

Claim Type - Loss of property
Unauthorized destruction

APPEAL OF DECISION OF STATE CLAIMS COMMISSION

Claimant, Brian Koontz, brings forth his appeal to the General Assembly of Arkansas on this 29th day of March 2013, states:

1) This claim was brought forth because Arkansas Department of Correction took claimants property and destroyed it without any justification.

2) Claimant followed all procedures and requirements

Set forth by the Claims Commission and General Assembly of Arkansas. Claim should have been heard by Commission.

3.) Claim was not frivolous and claimant presented accurate documents of confiscated property.

4.) Respondents provided no information on why property was taken and destroyed or that they gave claimant reasonable opportunity to send property home as required by policy

(see AR 841 and AR 401 section F AD 09-07 sections A thru h.).

Claimant therefore asks respectfully that this General Assembly review claim, see that all requirements were met, overturn ruling of Claims Commission, grant claimant \$73.37 in lost property damages, and any other appropriate relief deemed by General Assembly.

Respectfully submitted,

Mr. Brian Koontz

ADC # 115260

P.O. Box 600

Grady Ark 71644-0600

2/

STATE OF ARKANSAS

800-4

COUNTY OF Lincoln)
)
)

AFFIDAVIT

I, Mr. Brian Kovatz, after first being duly sworn, do hereby swear, depose and state that: (a) Appeal of the State Claims Commission
was mailed via first class mail postage pre-paid
on March 29, 2013 to: Arkansas State Claims Commission
101 E Capitol Ave, Suite 410
Little Rock Ark 72201-3023

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

3 29 13
DATE

Mr. Brian Kovatz
AFFIANT

SOCIAL SECURITY #

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, on this 28 day of March, 2013.

[Signature]
NOTARY PUBLIC

PELTON POOSE
NOTARY PUBLIC STATE OF ARKANSAS
DESHLER COUNTY
My Commission Expires 01-31-2021
Commission # 2382202

My Commission Expires: 01-31-2021