

United States Court of Appeals
For the Eighth Circuit

No. 19-1273

James L. Toney

Plaintiff - Appellant

v.

Corporal Heath Dickson, Malvern Police Department; Sergeant Keith Prince, Malvern Police Department; Assistant Chief Jim Bailey, Malvern Police Department

Defendants - Appellees

Appeal from United States District Court
for the Western District of Arkansas - Hot Springs

Submitted: November 25, 2019

Filed: December 2, 2019
[Unpublished]

Before GRUENDER, WOLLMAN, and KOBES, Circuit Judges.

PER CURIAM.

Arkansas prisoner James Toney appeals the district court's¹ adverse grant of summary judgment in his 42 U.S.C. § 1983 action. After careful review of the record and the parties' arguments on appeal, we conclude that summary judgment was proper. *See Tusing v. Des Moines Indep. Cnty. Sch. Dist.*, 639 F.3d 507, 514 (8th Cir. 2011) (reviewing summary judgment decision de novo, viewing the record in the light most favorable to the non-moving party; stating that summary judgment is appropriate if no genuine issue of material fact exists such that the movant is entitled to judgment as a matter of law). Accordingly, we affirm. *See* 8th Cir. R. 47B.

¹The Honorable P.K. Holmes, III, United States District Judge for the Western District of Arkansas.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 19-1273

James L. Toney

Plaintiff - Appellant

v.

Corporal Heath Dickson, Malvern Police Department; Sergeant Keith Prince, Malvern Police Department; Assistant Chief Jim Bailey, Malvern Police Department

Defendants - Appellees

Appeal from U.S. District Court for the Western District of Arkansas - Hot Springs
(6:17-cv-06100-PKH)

JUDGMENT

Before GRUENDER, WOLLMAN, and KOBES, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

December 02, 2019

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 19-1273

James L. Toney

Appellant

v.

Corporal Heath Dickson, Malvern Police Department, et al.

Appellees

Appeal from U.S. District Court for the Western District of Arkansas - Hot Springs
(6:17-cv-06100-PKH)

ORDER

The petition for rehearing by the panel is denied.

January 09, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

JAMES L. TONEY

PLAINTIFF

v.

Civil No. 6:17-cv-06100

CORPORAL HEATH DICKSON,
Malvern Police Department (“MPD”);
SERGEANT KEITH PRINCE, MPD;
ASSISTANT CHIEF JIM BAILEY, MPD;
and CHIEF OF POLICE DONNIE
TABER, MPD

DEFENDANTS

MEMORANDUM OPINION

This is a civil rights action filed *pro se* by Plaintiff, James L. Toney, under 42 U.S.C. § 1983. Currently before the Court is a Motion for Summary Judgment filed by Defendants Heath Dickson, Keith Prince and Jim Bailey. (ECF No. 55). Plaintiff filed a Response (ECF No. 60) and Defendants filed a Reply. (ECF No. 63). The matter is ripe for consideration.

I. BACKGROUND

Plaintiff is currently an inmate in the Arkansas Department of Correction, Tucker Unit. This case arises from events that occurred on August 23, 2017, while Defendants Dickson and Prince were attempting to execute an arrest warrant on Plaintiff at his home. At the time of the incident, Defendants Dickson and Prince were officers with the City of Malvern Police Department and Bailey was the Assistant Chief of Police. Viewed in the light most favorable to Plaintiff, the relevant facts are as follows.¹

On August 23, 2017, Defendants Dickson and Prince arrived at Plaintiff’s residence at 9:09 p.m. to execute an arrest warrant that came through the National Crime Information Center

¹Defendants submitted Defendant Dickson’s body camera video of the August 23, 2017, incident in support of their motion for summary judgment. (ECF No. 57-1, filed conventionally with the Clerk). The Court has relied in large part on the video footage in outlining the relevant facts.

(“NCIC”).² Defendant Dickson knocked on Plaintiff’s door and Plaintiff opened the door. (ECF No. 57-2, p. 1). Defendant Dickson advised Plaintiff that there was a warrant for Plaintiff’s arrest and that Defendant Dickson was going to take Plaintiff in for possession charges. *Id.* Defendant Dickson then asked Plaintiff if he had been given papers on a warrant when he was arrested a few days earlier. Plaintiff stated he was not served papers on a warrant. *Id.* Defendant Dickson asked Plaintiff a second time if he was served papers on a warrant. Plaintiff then told Defendant Dickson that he did have the papers in his billfold. *Id.*

Defendant Dickson asked Plaintiff to show him the papers. Defendants Dickson and Prince followed Plaintiff inside his home while he began searching for the warrant papers. Plaintiff yelled toward the back of his home and asked an unidentified person if they knew where his billfold was. Defendants Dickson and Prince followed Plaintiff throughout his living room and into the kitchen using their flashlights to look around. (ECF No. 57-1). Defendant Prince moved toward the kitchen counter where there appeared to be a billfold. Plaintiff told him not to touch it because the billfold belonged to someone else. Plaintiff then advised Defendants Dickson and Prince that his billfold must be in his truck and he walked toward the front door.

Defendants Dickson and Prince followed Plaintiff outside of the home to his vehicle and watched Plaintiff search the vehicle for the warrant. While Plaintiff was looking in the front seat of his vehicle for the warrant papers, Defendants Dickson and Prince received a call concerning an assault with physical injury at another location. Defendants asked Plaintiff to find the warrant so that they “didn’t have to take him in.” (ECF No. 57-1). Defendants Dickson and Prince then left Plaintiff’s residence. (ECF No. 57-2). The entire incident lasted just under three minutes. (ECF No. 57-1).

² The record reflects that Defendant Jim Bailey was not present during the attempted arrest and search on August 23, 2017.

Approximately twenty (20) minutes after Defendants Dickson and Prince left Plaintiff's home, the warrant for Plaintiff's arrest that Defendants Dickson and Prince had relied on was cleared rendering it inactive. (ECF No. 57-2, p. 7). After learning that the warrant had cleared the NCIC system that evening, Defendants Dickson and Prince returned to Plaintiff's residence. Defendant Dickson knocked on Plaintiff's door, but Plaintiff did not open it. Defendant Dickson advised Plaintiff through the closed door that the warrant was invalid, and that they would not be coming back.³ *Id.* at p. 2.

Plaintiff filed his Complaint on September 25, 2017. (ECF No. 1). On February 12, 2018, Plaintiff filed an Amended Complaint naming Corporal Heath Dickson, Sergeant Keith Prince, and Assistant Chief Jim Bailey as Defendants. (ECF No. 20). Plaintiff initially asserted three claims in his Amended Complaint: (1) violation of his Fourth Amendment Rights during the attempted execution of an arrest warrant on August 23, 2017; (2) unlawful seizure of his property on August 30, 2017, by Defendant Dickson; and (3) "superior aware of harassment...wrongfully Charge's victimize by Malvern Police Department" against Defendant Jim Bailey. *Id.* at pp. 4-13. On August 9, 2018, Plaintiff voluntarily dismissed claims 2 and 3 of his Amended Complaint leaving only the claims against Defendants Dickson, Prince and Bailey for the alleged violation of his Fourth Amendment rights. (ECF No. 46).⁴

Specifically, Plaintiff claims:

...Around 9:00 p.m. ...I heard Someone knocking At my Door, I thought it was my Brother but when I opened The Door it was officer Heath Dickson And Sgt. Prince, The Pushed me Aside And barged into my house...Officer Dickson Stated He Had a Warrant He and Sgt. Prince Started Searching my Residence. I Asked To See The Warrant Officer Dickson Stated (Shut your mouth I don't need one.) Officer Dickson Shined his flash light Down My hallway and Sgt. Prince Searched my

³ No video footage has been provided to the Court of Defendant Dickson and Prince when they returned to Plaintiff's home to inform him that the warrant was invalid.

⁴ On August 29, 2018, in response to this Court's order, Plaintiff clarified the claims he intended to dismiss. (ECF No. 51).

Kitchen. He picked up my Brothers Wallet from The Counter and Searched it. I Asked Him To put it Down and To See Their warrant for the Second Time and They Refused. I Asked Them To leave...They Refused. About five or Ten minutes had Past They Received A Call and Left...I Reported This Incident To officer Bailey and he never Responded. About 10:30 p.m. officer Dickson And Sgt. Prince Returned. They Beat on my door for about Five minutes and left.

(ECF No. 20, p. 5). Plaintiff is suing Defendants Dickson, Prince and Bailey in their individual and official capacities. He is seeking compensatory and punitive damages. (ECF No. 20, p. 13).

On September 14, 2018, Defendants filed the instant Motion for Summary Judgment and a Memorandum Brief in Support of the motion, arguing that they are entitled to judgment as a matter of law because: (1) Defendants did not violate Plaintiff's Fourth Amendment right to be free from unreasonable search and seizure; (2) they are entitled to qualified immunity; and (3) Plaintiff has not identified any policy or custom of the City of Malvern which violates his constitutional rights. (ECF No. 56). On October 12, 2018, Plaintiff filed a Reply restating his claims against Defendants. (ECF No. 60).

II. LEGAL STANDARD

Summary judgment is appropriate if, after viewing the facts and all reasonable inferences in the light most favorable to the nonmoving party, *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986), the record "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Once a party moving for summary judgment has made a sufficient showing, the burden rests with the non-moving party to set forth specific facts, by affidavit or other evidence, showing that a genuine issue of material fact exists." *Nat'l Bank of Commerce v. Dow Chem. Co.*, 165 F.3d 602, 607 (8th Cir. 1999).

The non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita*, 475 U.S. at 586. "They must show there is sufficient

evidence to support a jury verdict in their favor.” *Nat'l Bank*, 165 F.3d at 607 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)). “A case founded on speculation or suspicion is insufficient to survive a motion for summary judgment.” *Id.* (citing *Metge v. Baehler*, 762 F.2d 621, 625 (8th Cir. 1985)). “When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 550 U.S. 372, 380 (2007).

III. DISCUSSION

Plaintiff alleges Defendants Dickson and Prince violated his constitutional rights when they entered and searched his home on August 23, 2017, to execute an arrest warrant on Plaintiff without a copy of the warrant. Plaintiff also alleges Defendant Bailey never responded to his complaint concerning the incident. Defendants assert their actions did not violate Plaintiff's constitutional rights and they are entitled to qualified immunity.

A. Qualified Immunity

The qualified immunity doctrine provides “that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Moore v. City of Desloge, Mo.*, 647 F.3d 841, 846 (8th Cir. 2011) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). “Officials are not liable for bad guesses in gray areas; they are liable for transgressing bright lines.” *Ambrose v. Young*, 474 F.3d 1070, 1077 (8th Cir. 2007) (quoting *Davis v. Hall*, 375 F.3d 703, 712 (8th Cir. 2004) (internal quotation marks omitted)).

Whether Defendants Dickson, Prince, and Bailey are entitled to qualified immunity depends on “whether the facts alleged, taken in the light most favorable to [Plaintiff] show that

[Defendants'] conduct violated a constitutional right. If so, then the Court must determine whether the constitutional right was clearly established at the time." *Norris v. Engles*, 494 F.3d 634, 637 (8th Cir. 2007) (quoting *Flowers v. City of Minneapolis*, 478 F.3d 869, 872 (8th Cir. 2007)) (internal quotation marks omitted). As discussed below, the Court finds that none of the Defendants violated Plaintiff's constitutional rights and therefore it is unnecessary to address the second prong of the qualified immunity analysis.

1. Defendant Jim Bailey

As an initial matter, the Court finds Plaintiff has failed to state a constitutional claim against Defendant Jim Bailey. Individual liability under 42 U.S.C. § 1983 attaches only if a defendant directly participated in a constitutional violation or if failure to supervise and train an offending employee caused a constitutional deprivation. *Williams v. Davis*, 200 F.3d 538 (2000) (citing *Andrews v. Fowler*, 98 F.3d 1069, 1078 (8th Cir. 1996)).

The record demonstrates that Defendant Bailey was not involved in any way in the attempted arrest and search of Plaintiff's home on August 23, 2017. Moreover, Plaintiff has not alleged that Defendant Bailey failed to train or supervise Defendants Dickson and Prince. Instead, Plaintiff claims he informed Defendant Bailey about what happened and Bailey "never responded". (ECF No. 20, p. 5). The law is clear that inmates do not have a constitutionally protected right to a grievance procedure. *Lomholt v. Holder*, 287 F.3d 683, 684 (8th Cir. 2002) (citing *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993)). There is also no constitutionally protected right to engage in a grievance procedure at a law enforcement agency. For the same reason that an inmate cannot bring a § 1983 claim premised on failure to process grievances, no § 1983 claim premised on a law enforcement agency's failure to process grievances can proceed.

Accordingly, the Court finds that Defendant Bailey is entitled to qualified immunity and summary judgment should be granted as to Plaintiff's individual capacity claims against him.

2. Attempted Arrest – Defendants Dickson and Prince

The Fourth Amendment guarantees citizens a right not to be arrested absent the existence of probable cause. *Hill v. Scott*, 349 F.3d 1068, 1072 (8th Cir. 2003) (citing *Habiger v. City of Fargo*, 80 F.3d 289, 297 (8th Cir. 1996)). “The Fourth Amendment requires the States to provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty.” *Baker v. McCollan*, 443 U.S. 137, 142-143 (1979) (citing *Gerstein v. Pugh*, 420 U.S. 103 (1975)). An arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is there. *Payton v. New York*, 445 U.S. 573, 586 (1980).

A review of the record confirms that neither Defendant Dickson nor Prince violated Plaintiff’s constitutional rights during the attempted arrest on August 23, 2017. Defendant Dickson ran a search in NCIC for outstanding warrants that evening and an arrest warrant for possession appeared for Plaintiff. (ECF No. 57-2, pp. 3-6). Based on this warrant Defendants Dickson and Prince went to Plaintiff’s residence to arrest him. Although the warrant was cleared and invalidated after Defendants left Plaintiff’s residence, there is nothing in the record to suggest that either Defendant Dickson or Prince was aware of anything that would have made the warrant invalid at the time they attempted to arrest Plaintiff.

In addition, Plaintiff’s claim that Defendants Dickson and Prince violated his constitutional rights because they did not have a copy of the arrest warrant with them when they came to his home is without merit. Police officers are not required to possess the actual warrant to arrest an individual. *See* Fed. R. Crim. P. 4(c)(3) and Ark. R. Crim. P. 4.3 (if officer does not possess the warrant, the officer must inform the defendant of the warrant’s existence and of the offense

charged, and at defendant's request, show the original or duplicate original warrant as soon as possible).

The Court finds that Defendants Dickson and Prince had probable cause to come to Plaintiff's home to execute what they believed was a valid warrant. Therefore, Defendants did not violate Plaintiff's Fourth Amendment rights when they attempted to arrest him, and they are entitled to qualified immunity on this claim.

3. Search and Seizure – Defendants Dickson and Prince

Plaintiff also has the right to be free from unreasonable searches and seizures under the Fourth Amendment of the United States Constitution. *Terry v. Ohio*, 392 U.S. 1, 8 (1968). The Constitution prohibits unreasonable searches and seizures, but not all searches and seizures. *Elkins v. United States*, 364 U.S. 206, 222 (1960). In determining the reasonableness of a law enforcement practice, a court must weigh the public interest promoted by the practice against its intrusion upon the personal rights of the individual protected by the Fourth Amendment. *Bell v. Wolfish*, 441 U.S. 520, 558 (1979). “Whether an official’s conduct was objectively reasonable is a question of law.” *Engleman v. Deputy Murray*, 546 F.3d 944 (8th Cir. 2008). The law is clear that police officers may perform a protective sweep incident to an arrest to protect themselves or others when executing an arrest warrant. *Lyles v. City of Barling*, 17 F. Supp. 2d 848, 857 (W.D. Ark. 1998), *aff’d*, 181 F.3d 914 (8th Cir. 1999); *U.S. v. Blake*, 484 F.2d 50, 57 (8th Cir. 1973), *cert. denied*, 417 U.S. 949 (1974) (once inside, a quick and cursory viewing of the apartment is permissible to check for person who may present a security risk).

While the Court is required to view the facts in the light most favorable to Plaintiff, it must only take as true those assertions properly supported by the record. *See Wilson v. Lawrence County*, 260 F.3d 946, 951 (8th Cir. 2001). Here, Plaintiff's allegations are contradicted by the video evidence. The body camera footage from the evening of August 23, 2017, demonstrates

Defendant Dickson and Prince entered Plaintiff's home through an open door and followed him using their flashlights to look around the living room and kitchen while Plaintiff searched for the warrant paperwork. Defendants did not "spring open" a screen door or "push" their way into Plaintiff's home. At no point in time did the Defendants push or physically touch Plaintiff. In addition, Defendant Dickson never told Plaintiff to "shut his mouth" nor did he indicate that he did not need a warrant to arrest Plaintiff. Further, the video does not show either Defendant Dickson or Prince picking up or searching the wallet belonging to Plaintiff's brother. Then, after following Plaintiff out of his home so he could look in his vehicle for the warrant paperwork, Defendants Dickson and Prince received a call involving an assault at another location and left Plaintiff's residence without arresting him. Although Plaintiff made comments to the effect that Defendants were "messing" with him, Plaintiff never asked them to leave. As previously stated, the entire encounter lasted less than three (3) minutes.

The Court finds that the conduct of Defendants Dickson and Prince during the search of Plaintiff's home did not violate Plaintiff's Fourth Amendment rights. Therefore, Defendants are entitled to qualified immunity. Accordingly, Defendants Dickson and Prince are entitled to summary judgment on Plaintiff's individual capacity claims regarding the search of his home.

B. Official Capacity Claims

Plaintiff also asserts official capacity claims against Defendants Dickson, Prince and Bailey. Under § 1983, a defendant may be sued in either his individual capacity, or in his official capacity, or in both capacities. *Gorman v. Bartzch*, 152 F.3d 907, 914 (8th Cir. 1998). With respect to the official capacity claims, they are "functionally equivalent to a suit against the employing governmental entity." *Veatch v. Bartels Lutheran Home*, 627 F.3d 1254, 1257 (8th Cir. 2010). In other words, Plaintiff's official capacity claims against Defendants Dickson, Prince and Bailey are

treated as claims against their employer – the City of Malvern. *See Murray v. Lene*, 595 F.3d 868, 873 (8th Cir. 2010).

“[I]t is well established that a municipality cannot be held liable on a *respondeat superior* theory, that is, solely because it employs a tortfeasor.” *Atkinson v. City of Mountain View, Mo.*, 709 F.3d 1201, 1214 (8th Cir. 2013). To establish Defendants’ official capacity liability under § 1983, “plaintiff must show that a constitutional violation was committed pursuant to an official custom, policy, or practice of the governmental entity.” *Moyle v. Anderson*, 571 F.3d 814, 817 (8th Cir. 2009) (citation omitted). To establish the existence of an unconstitutional policy, the plaintiff must point to “a deliberate choice of a guiding principle or procedure made by the municipal official who has final authority regarding such matters.” *Mettler v. Whitledge*, 165 F.3d 1197, 1204 (8th Cir. 1999).

Here, Plaintiff has not alleged any custom or policy of the City of Malvern that contributed to a violation of Plaintiff’s civil rights. Instead, Plaintiff has simply reiterated his individual capacity claims against Defendants. Accordingly, Plaintiff’s official capacity claims fail as a matter of law.

IV. CONCLUSION

For the reasons stated above, Defendants’ Motion for Summary Judgment (ECF No. 55) is **GRANTED**. Plaintiff’s claims against Defendants Heath Dickson, Keith Prince, and Jim Bailey are **DISMISSED WITH PREJUDICE**. A judgment of even date shall issue.

IT IS SO ORDERED this 20th day of December 2018.

P. K. Holmes, III

HON. P. K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE

STATE OF ARKANSAS

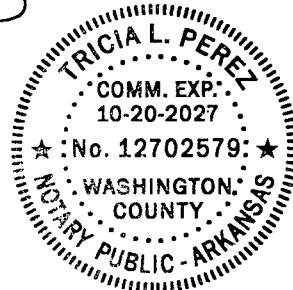
COUNTY OF Washington

)
) SS

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, on this 24th day of February, 20 20.

Tricia L. Perez
NOTARY PUBLIC

My Commission Expires: 10-20-2027



CERTIFICATE OF SERVICE

A copy of the foregoing has been served by U.S. Mail to ensure delivery

I, James Leonard Toney, Petitioner herein, do certify that a copy of this petition has been served

on this 24 day of February, 20 20.

James L. Toney #107698
Movant
ADC

Summary of the Case

It has been almost a decade of this; False-or-No Warrant, Targeting & Profiling, and Harassment.

Cooperative; is being in compliance with an Law-Enforcement Officer-or-Police Officer. Now;

Consent-changes when an Law-Enforcement Officer is acting Deliberately Indifference in violation of the Law that Constitute the violation of one's right's of the Fourth Amendment, any other Constitutional right also.

In the appellees brief the second page the Table of Contents paragraph B, C, D, change when Fabricating the sixth Lie on the FBI-NCIC the first initial and Original is the Incident Report all five other reason Corporal Heath Dickson said or gave are in the 7 page brief that's the Argument of this brief and should be added to the rear of this brief.

The NCIC Fabrication was the only way to justify Sgt. Prince + Corp. Dickson wrongfully coming to my home Harassing me.

The request to the FBI-Criminal Justice Information Services Division will provide the Court with the truth.

The Appellant is entitled to justice.

Eighth Circuit Court of Appeals

'Brief'

Toney

Appellant

vs. case No. 19-1273

Dickson et. al. (MPD)

Appellees

(1) From 2012 to 2017, on so many occasion pleading and begging habitually, Asking why are you doing me like this, some time's with tears in my eye's why are you harassing me everytime you see me or come by house so mad hurt with tears A grown ass man.

This one particular morning around 2: AM i was putting a motor in my Chevy Truck lining up the motor mount screw hole's and looked over Dickson was in my yard under my garage beside my truck i ask Dickson why was he on my property he said that he was bored and i was the first person he came to mess with or bother. I told him that he has a problem. and to leave.

(2) On august, 23rd 2017 there was never a warrant look at the Incident Report. Also See: The Memorandum of Law, 5, five different reason why Dickson and Prince where at my residence.

(3) National Crime Information Center, is the sixth EXCUSE that the Western District Court of Arkansas and the defendant's Attorney used to dismiss this case No. 19-1273 in this package. See: —

Notice of Appeal, also Appeal Response to the Summary Judgment Along with a Motion for Discovery NCIC and Body Cam. Two different Motion for Discovery it's, Important to have both Discovery as you see i have filed, my motions have been ignore. No one was penalized or reprimanded for filing.

false case's and stop the discovery also the process of the court the Western District Court knew that i am not an Attorney and i requested on two different occasion and ~~not~~ state if we think you need an Attorney i would appoint one. it's very sad that Western District Court of Arkansas allow the defendant's Attorney to file false case to stop everything. See ' Dismissal Tactic IFP'

1. Defendant Attorney. Just refused Disposition for the third time No disposition.
2. NCC is not on the original Incident Report; "Word of Mouth".
3. No Warrant
4. No Discovery
5. No Disposition
6. The Western District Court of Arkansas went on: Opinion; No Factual Facts.
7. Word of Defendant Attorney's mouth; No Factual Facts.

Where is the justice, "Please Review the entire Appeal."

Submitted by

James L. Toney
James L. Toney

Date: March 16, 2019

VERIFICATION

STATE OF ARKANSAS

COUNTY OF Jefferson

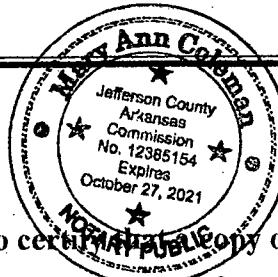
Petitioner, James L. Toney, being first duly sworn under oath, presents that he has read and subscribed to the above and states that the information therein is true and correct.

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, on this 17 day of March, 2019

Mary Ann Coleman

Notary Public

My Commission Expires: October 27, 2021



CERTIFICATE OF SERVICE

I, James L. Toney, Petitioner herein, do certify publicly of this petition has been served this 16th day of March, 2019, to 8th Circuit Court of Appeals, P.O. Box 1785, St. Louis, Missouri County, Arkansas, by placing same in the U.S. Mail with sufficient postage affixed to ensure delivery.

James L. Toney

Petitioner, Pro Se

ADC# 107698

Malvern Police Department

215 E Highland, Malvern, AR 72104

Offense / Incident Report

Report Date 08/23/2017 2113	Type of Incident ATTEMPTED WARRANT SERVICE	Complaint No. 17-008178	Case Status					
Description								
Incident Location								
Street Address 903 LOUISE ST #C	City MALVERN	State	Zip Code 72104					
Sector	Precinct	Geo	Ward					
Neighborhood	Jurisdiction	Latitude	Primary Location					
Longitude	Secondary Location							
Dispatch Information								
Received Date / Time 08/23/2017 2113	Call Received Via OFFICER OBSERVA	Dispatched Date / Time	Call Dispatched As FOLLOW-UP					
Arrived Date / Time 08/23/2017 2115	Departed Date / Time 08/23/2017 2120	Offense Category	TTY Ref.#					
			Tel/Type Operator					
Officers								
ID 153	Name Cpl. Heath Dickson 153	Role REPORTING	Primary <input checked="" type="checkbox"/>					
Arrived Scene								
Departed Scene								
Offenses								
Charge Cause Number	Local Code	Jurisdiction	State Statute Type/Class					
State Charge Code Category								
ATTEMPTED WARRANT SERVICE								
Offense / Incident Narrative								
Attempted to serve warrant on James Toney. Upon making contact with MR. Toney we received a call for a physical fight with injury. Due to priority call Left and went to call at 320 W Sullenberger. Upon clearing the sullenberger I was advised that dispatch could no find the hard copy.								
Other								
Name (Last, First Middle Suffix) TONEY, JAMES	Other Type	Race B	Sex M	DOB 56	Age 56	Juvenile N	SSN [REDACTED]	Moniker
Address								
Type 320 PINE BLUFF #2	Street Address	City MALVERN	State AR	Zip Code 72104	Country UNITED STATES			
Drivers License 928098472	Type AR	State AR	Expires	Restrictions	Marital Status	Resident Status R	Ethnicity N	Language
Reporting Officer 153 Cpl. Heath Dickson 153	Approving Officer (I) (Cover Pages Only)							
Approving Officer (II) (Cover Pages Only)								
Page 1 of 1								

EXHIBIT
EXHIBIT

A

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

JAMES L. TONEY

PLAINTIFF

v.

Civil No. 6:17-cv-06100

CORPORAL HEATH DICKSON,
Malvern Police Department ("MPD");
SERGEANT KEITH PRINCE, MPD;
ASSISTANT CHIEF JIM BAILEY, MPD;
and CHIEF OF POLICE DONNIE
TABER, MPD

DEFENDANTS

MEMORANDUM OPINION

This is a civil rights action filed *pro se* by Plaintiff, James L. Toney, under 42 U.S.C. § 1983. Currently before the Court is a Motion for Summary Judgment filed by Defendants Heath Dickson, Keith Prince and Jim Bailey. (ECF No. 55). Plaintiff filed a Response (ECF No. 60) and Defendants filed a Reply. (ECF No. 63). The matter is ripe for consideration.

I. BACKGROUND

Plaintiff is currently an inmate in the Arkansas Department of Correction, Tucker Unit. This case arises from events that occurred on August 23, 2017, while Defendants Dickson and Prince were attempting to execute an arrest warrant on Plaintiff at his home. At the time of the incident, Defendants Dickson and Prince were officers with the City of Malvern Police Department and Bailey was the Assistant Chief of Police. Viewed in the light most favorable to Plaintiff, the relevant facts are as follows.¹

On August 23, 2017, Defendants Dickson and Prince arrived at Plaintiff's residence at 9:09 p.m. to execute an arrest warrant that came through the National Crime Information Center

¹Defendants submitted Defendant Dickson's body camera video of the August 23, 2017, incident in support of their motion for summary judgment. (ECF No. 57-1, filed conventionally with the Clerk). The Court has relied in large part on the video footage in outlining the relevant facts.

billfold. Mr. Toney told him not to touch it because the billfold belonged to someone else. (*R. Dist. Ct. Docket No. 64*). Mr. Toney then advised Officers Dickson and Prince that his billfold must be in his truck and he walked toward the front door. (*R. Dist. Ct. Docket No. 57 ¶ 11*).

Officers Dickson and Prince followed Mr. Toney outside of the home to his vehicle and watched Mr. Toney search the vehicle for the warrant. (*R. Dist. Ct. Docket No. 57 ¶ 12*). While Mr. Toney was looking in the front seat of his vehicle for the warrant papers, Officers Dickson and Prince received a call concerning an assault with physical injury at another location. (*R. Dist. Ct. Docket No. 57 ¶ 13*). The officers asked Mr. Toney to find the warrant so that they "didn't have to take him in." (*R. Dist. Ct. Docket No. 57 ¶ 14*). Officers Dickson and Prince then left Mr. Toney's residence. The entire incident lasted just under three minutes.

Approximately twenty (20) minutes after Officers Dickson and Prince left Mr. Toney's home, the warrant for Mr. Toney's arrest that Officers Dickson and Prince had relied on was cleared rendering it inactive. (*R. Dist. Ct. Docket No. 57 ¶ 16*). After learning that the warrant had cleared the NCIC system that evening, Officers Dickson and Prince returned to Plaintiff's residence. Officer Dickson knocked on Mr. Toney's door, but Mr. Toney did not open it. Officer Dickson advised Mr. Toney through the closed door that the warrant was invalid, and that they would not be coming back. (*R. Dist. Ct. Docket No. 57 ¶¶ 17-18*).

EXHIBIT

C

4



U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

August 2, 2019

Mr. James Leonard Toney, 107698
Tucker Correctional Facility
Post Office Box 240
Tucker, AR 72168

Dear Mr. Toney:

Reference is made to your letter dated May 15, 2019, with enclosures, requesting information pertaining to you in the National Crime Information Center (NCIC) and a search of the FBI Criminal File for any information we maintain concerning you.

Although the Privacy Act of 1974 generally provides that an individual has a right to determine the identities of the recipients of information concerning him/her, the Act also allows certain agencies to exempt records from such access. Specifically, the criminal law enforcement records concerning an individual that are maintained by an agency whose principal function pertains to the enforcement of criminal laws can be exempted from disclosure. Pursuant to Title 5, United States Code (USC), Section 552a(j)(2), the Attorney General has designated as exempt the "Criminal Justice Information Services Division Records System (Justice/FBI-009)." With regard to the Freedom of Information Act (FOIA), this same information is being withheld, since it pertains to purely internal agency practices. Such material is not appropriate for discretionary release. [See 5 USC § 552(b)(2).] For further explanations concerning these exemptions, see the enclosed form "Explanation of Exemptions" and refer to Title 28, Code of Federal Regulations, Section 16.96(e).

Based on the above, your request for a listing of prior recipients must be denied. This denial should not be construed as either affirming or denying that any such disseminations have, in fact, been made. We are required to inform you that you may appeal this denial by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following website: <<https://foiaonline.regulations.gov/foia/action/public/home>>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

EXHIBIT

D

Information Request for Clarification to the Court

I James Leonard Toney is requesting the following Information.
NCIC - Evidence, Documentation and Clarification.

1. Did my name run across the NCIC database any in the year of 2017? Please give time and date's if any? For any Warrant? (Answers)
2. On august, 23, 2017 Approximately 9:09 P.M. central time of night it was said my name James L. Toney ran across NCIC as an outstanding warrant and approximately 20 minutes later NCIC cleared that warrant as invalid? (Answers)
3. Question, Do NCIC clear warrants at that time of night in 20 minutes (Answers)
4. Question, Could you take a close look into your database and tell me and the Federal Court if this really exist or took place? or happen (Answers)

To:
Criminal Justice Information Services Division we really appreciate your time.

From:
The Eighth Circuit Court of Appeals

James Leonard Toney

print:

Signature:

Date: 5-15-19

James Leonard Toney
James L. Toney

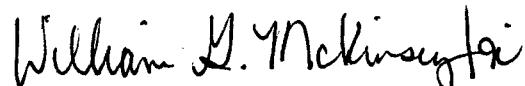
Mr. James Leonard Toney, 107698

For your information, the FBI's Criminal Justice Information Services (CJIS) Division incorporates both the Fingerprint Identification Records System (FIRS) and the NCIC. The NCIC is a nationwide computerized information system established as a service to criminal justice agencies. Disclosure of information from the NCIC is for the purpose of providing information to authorized agencies to facilitate the apprehension of fugitives, the location of missing persons, the location and/or return of stolen property, and other similar criminal justice objectives. The NCIC is also a telecommunications link to an automated system of Identity History Summary (IdHS) information known as the Interstate Identification Index (III). Access to and use of the NCIC III is restricted to criminal justice agencies that perform the administration of criminal justice. The FBI's CJIS Division is the component within the FBI which maintains the NCIC, but does not make the actual entries into the NCIC. Agencies that enter records into the NCIC are responsible for their accuracy, timeliness, and completeness.

A search of the NCIC Wanted Persons File revealed no outstanding wants associated with your name and date of birth. Please be advised that local authorities are not mandated to submit want information to the NCIC, although they generally choose to do so. Therefore, the nonexistence of wants on the federal level does not preclude the possibility of wants or warrants on local levels.

Based on your compliance with the provisions of U.S. Department of Justice Order 556-73, enclosed is a copy of your FBI IdHS as it currently appears in the FBI Criminal File.

Sincerely yours,



William G. McKinsey
Section Chief
Biometric Services Section
Criminal Justice Information
Services Division

Enclosures (2)

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b) (1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;
- (b) (2) related solely to the internal personnel rules and practices of an agency;
- (b) (3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b) (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b) (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b) (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b) (7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b) (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b) (9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d) (5) information compiled in reasonable anticipation of a civil action proceeding;
- (j) (2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k) (1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k) (2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k) (3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k) (4) required by statute to be maintained and used solely as statistical records;
- (k) (5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k) (6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k) (7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

Eighth Circuit Court of Appeals

PRO SE Notice of Docket Activity

The following was filed on 06/10/2019

Case Name: James Toney v. Heath Dickson, et al
Case Number: 19-1273

Docket Text:

DOCUMENT FILED - regarding information for case filed by Mr. James L. Toney. w/service by USCA-8 on 06/18/2019 [4798781] [19-1273]

The following document(s) are associated with this transaction:

Document Description: Appellant document regarding info.

Notice will be mailed to:

Mr. James L. Toney
TUCKER CORRECTIONAL FACILITY
107698
P.O. Box 240
Tucker, AR 72168-0240

Notice will be electronically mailed to:

Ms. Sara Lynn Monaghan: smonaghan@arml.org, tsquires@arml.org

EXHIBIT

E

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 19-1273

James L. Toney
Appellant

v.

Corporal Heath Dickson, Malvern Police Department, et al.
Appellees

Appeal from U.S. District Court for the Western District of Arkansas -
Hot Springs (6:17-cv-06100-PKH)

Motion To Submit FBI Criminal Justice Information Services -
Division - Summary Request NCIC History Information and Reason

Original Date: 10/3/18 The Incident Report was the first initial No city; No county; or No state - Warrant; Also Motion to Response [58] For Summary Judgment See; Second of All; 2. Dispatch prints the warrant's out. Officer Dickson State's Dispatch could not find the hard copy. Meaning, There never was a warrant. The Memorandum of Law Response [58] For Summary Judgment States, five(5) Different Answers or Reasons as to why he was their at my house.

10/3/18 Date: 12/20/18 NCIC was Fabricated into the Summary Judgment for Justification of wrongfully comming to my House. The Incident Report has a Similarity (statement) received a call for a physical fight.

Both See. This Fabrication is when i contacted NCIC this Motion Contains all information and documentations.

Date: May, 30, 2019 Respectfully Submitted by

print: James L Toney

Signature: James L Toney

VERIFICATION

STATE OF ARKANSAS

COUNTY OF Jefferson

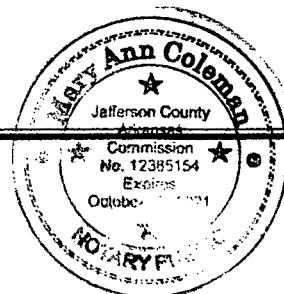
Petitioner, James Leonard Toney, being first duly sworn under oath, presents that he has read and subscribed to the above and states that the information therein is true and correct.

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, on this 30 day of May, 20 19.

Mary Ann Coleman

Notary Public

My Commission Expires: October 27, 2019



CERTIFICATE OF SERVICE

I, James Leonard Toney, Petitioner herein, do certify that a copy of this petition has been served this 30 day of May, 20 19, to Eighth Circuit Court of Appeals, St. Louis, Missouri, County, Arkansas, by placing same in the U.S. Mail with sufficient postage affixed to ensure delivery.

James L. Toney
Petitioner, Pro Se
ADC# 107698



U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

Dear Customer:

Enclosed, please find a Departmental Order 556-73 information packet. In order to obtain a copy of your FBI Identity History Summary or proof that a summary does not exist, please follow the instructions closely, ensuring that you provide all the required information. Although the FBI employs the most efficient methods for processing these requests, processing times may vary up to twelve weeks depending on the volume of requests received.

Forward your completed request to:

FBI CJIS Division - Summary Request
1000 Custer Hollow Road
Clarksburg, WV 26306

If you have any questions or need assistance, please contact the Customer Service Group at (304) 625-5590 or via e-mail at identity@fbi.gov.

Criminal History Analysis Team
Criminal History Information and Policy Unit
Biometric Services Section
Criminal Justice Information Services Division

PRIVACY ACT STATEMENT

The FBI's acquisition, retention, and sharing of information submitted on this form is generally authorized under 28 USC 534 and 28 CFR 16.30-16.34. The purpose for requesting this information from you is to provide the FBI with a minimum of identifying data to permit an accurate and timely search of identity history identification records. Providing this information (including your Social Security Account Number) is voluntary; however, failure to provide the information may affect the completion of your request. The information reported on this form may be disclosed pursuant to your consent, and may also be disclosed by the FBI without your consent pursuant to the Privacy Act of 1974 and all applicable routine uses. Under the Paperwork Reduction Act, you are not required to complete this form unless it contains a valid OMB control number. The form takes approximately 3 minutes to complete.

Applicant Information * Denotes Required Fields

*Last Name Toney
Middle Name 1 Leonard

*First Name James
Middle Name 2 _____

*Date of Birth: 8-7-1961

*Place of Birth: Malvern Arkansas U.S. Citizen or Legal Permanent Resident: Yes No

*Country of Citizenship: United States

Country of Residence: United States

Prisoner Number (if applicable): ADC# 107698

*Last Four Digits of Social Security Number: 8957

*Height: 5'10

*Weight: 215

*Hair (please check appropriate box):

Bald Black Blonde/Strawberry Blue Brown Gray Green Orange Pink
 Purple Red/Auburn Sandy Unknown White

*Eyes (please check appropriate box):

Black Blue Brown Gray Green Hazel Maroon Multicolored Pink Unknown

Applicant Home Address

*Address 903 C Louise St.

*City Malvern

*Postal (Zip) Code 72104

Phone Number _____

*State Arkansas

*Country United States

E-Mail _____

Mail Results to Address

C/O James Leonard Toney #107698

Address P.O. Box 240

ATTN _____

City Tucker

State Arkansas

Postal (Zip) Code 72168

Country United States

Phone Number (if different from above) _____

Payment Enclosed: (please check appropriate box)

CERTIFIED CHECK MONEY ORDER CREDIT CARD FORM

Reason for Request:

Personal review
 International adoption

Challenge information on your record
 Live, work, or travel in a foreign country

Adoption of a child in the U.S.
 Other

* APPLICANT SIGNATURE James L Toney

DATE 5-12-19

Mail the signed applicant information form, fingerprint card, and payment of \$18 U.S. dollars to the following address:

FBI CJIS Division – Summary Request
1000 Custer Hollow Road
Clarksburg, West Virginia 26306

You may request a copy of your own Identity History Summary to review it or obtain a change, correction, or an update to the summary.

APPLICANT

See Privacy Act Notice on Back

LEAVE BLANK

TYPE OR PRINT ALL INFORMATION IN BLACK

FBI

LEAVE BLANK

*FD-258 (Rev. 9-9-13) 1110-0046

SIGNATURE OF PERSON FINGERPRINTED

RESIDENCE OF PERSON FINGERPRINTED

DATE SIGNATURE OF OFFICIAL TAKING FINGERPRINTS

EMPLOYER AND ADDRESS

REASON FINGERPRINTED

ALIASES AKA

O

R

CITIZENSHIP CTZ

SEX

RACE

HGT.

WGT.

EYES

HAIR

PLACE OF BIRTH

DATE OF BIRTH DOB
Month Day Year

YOUR NO. OCA

FBI NO. FBI

ARMED FORCES NO. MNU

SOCIAL SECURITY NO. SOC

MISCELLANEOUS NO. MNU

LEAVE BLANK

CLASS

REF.

1. R. THUMB

2. R. INDEX

3. R. MIDDLE

4. R. RING

5. R. LITTLE

6. L. THUMB

7. L. INDEX

8. L. MIDDLE

9. L. RING

10. L. LITTLE

LEFT FOUR FINGERS TAKEN SIMULTANEOUSLY

L. THUMB

R. THUMB

RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY

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g, WV 26306-0001

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PERSONAL AND CONFIDENTIAL
IF THIS MAIL IS NOT ADDRESSED TO YOU,
DO NOT OPEN
RETURN TO POSTAL CARRIER UNOPENED

FIRST CLASS MAIL

SB/372

JAMES LEONARD TONEY ADC 107698
C/O: ADC TUCKER UNIT
P O BOX 240
TUCKER, AR 72168

20639001-04124

for Clarification to the Court



Eighth Circuit Court of Appeals

PRO SE Notice of Docket Activity

The following was filed on 08/20/2019

Case Name: James Toney v. Heath Dickson, et al
Case Number: 19-1273

Docket Text:

DOCUMENT FILED - FBI IDENTITY HISTORY SUMMARY DOES NOT EXIST filed by Mr. James L. Toney. w/service 08/21/2019. NO Further action taken. [4821426] [19-1273]

The following document(s) are associated with this transaction:

Document Description: FBI identity history summary

Notice will be mailed to:

Mr. James L. Toney
TUCKER CORRECTIONAL FACILITY
107698
P.O. Box 240
Tucker, AR 72168-0240

Notice will be electronically mailed to:

Honorable P. K. Holmes III: pk_holmes@arwd.uscourts.gov
Ms. Sara Lynn Monaghan: smonaghan@arml.org, tsquires@arml.org
Mr. Douglas F. Young:

EXHIBIT

F

August, 11, 2019

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 19-1273

James L. Toney
Appellant

vs.

Corporal, Heath Dickson
Sergeant, Keith Prince
Malvern Police Department, et al.
Appellees

Appeal from U.S. District Court for the Western District of Arkansas Hot Springs
(6:17-cv-06100 PKH)

FINDING From,
FBI Identity History Summary or proof that a summary does not exist.

The U.S. Department of Justice, Federal Bureau of Investigation.
Reveal and clarify that the story, The NCIC warrant for Mr. Toney's
arrest that Officers Dickson and Prince had relied on was a lie.
Fabricated the only way to justify wrongfully coming to my home Harassing me.
The court have in there possession same Summary request question that
was given to the FBI-CJSI Division - Summary Request now the court
has been provided with the truth.

This not word of mouth like you except from the Appellees this
is factual fact's. A lie don't care who tell it, This is the second
Federal Court that the Appellees has lied on the FBI NCIC.

In every department the county dispatch prints out the warrant's Officer Dickson, knew that it wasn't a warrant that is why Officer Dickson fabricated the NCIC Lie. Officer Dickson stated in the Incident Report that dispatch couldn't find the hard copy dispatch print the warrant's you can't print something that don't exist.

Dispatch also is consider as The Agency that furnish the Data to the FBI NCIC for there DataBase.

Trickery, false or NO Warrant, Constitute unwarranted invasion of personal privacy rights. See: U.S. Department of Justice page 3 Explanation of Exemptions checked (b)(7)

Submitted by:

print: James L. Toney

signature: James L. Toney

Date: August 11, 2019

Address:

Tucker Correctional Facility
P. O. Box 240
Tucker, Arkansas 72216B

0-240



U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

August 2, 2019

Mr. James Leonard Toney, 107698
Tucker Correctional Facility
Post Office Box 240
Tucker, AR 72168

Dear Mr. Toney:

Reference is made to your letter dated May 15, 2019, with enclosures, requesting information pertaining to you in the National Crime Information Center (NCIC) and a search of the FBI Criminal File for any information we maintain concerning you.

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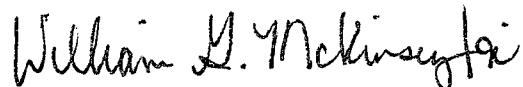
Mr. James Leonard Toney, 107698

For your information, the FBI's Criminal Justice Information Services (CJIS) Division incorporates both the Fingerprint Identification Records System (FIRS) and the NCIC. The NCIC is a nationwide computerized information system established as a service to criminal justice agencies. Disclosure of information from the NCIC is for the purpose of providing information to authorized agencies to facilitate the apprehension of fugitives, the location of missing persons, the location and/or return of stolen property, and other similar criminal justice objectives. The NCIC is also a telecommunications link to an automated system of Identity History Summary (IdHS) information known as the Interstate Identification Index (III). Access to and use of the NCIC III is restricted to criminal justice agencies that perform the administration of criminal justice. The FBI's CJIS Division is the component within the FBI which maintains the NCIC, but does not make the actual entries into the NCIC. Agencies that enter records into the NCIC are responsible for their accuracy, timeliness, and completeness.

A search of the NCIC Wanted Persons File revealed no outstanding wants associated with your name and date of birth. Please be advised that local authorities are not mandated to submit want information to the NCIC, although they generally choose to do so. Therefore, the nonexistence of wants on the federal level does not preclude the possibility of wants or warrants on local levels.

Based on your compliance with the provisions of U.S. Department of Justice Order 556-73, enclosed is a copy of your FBI IdHS as it currently appears in the FBI Criminal File.

Sincerely yours,



William G. McKinsey
Section Chief
Biometric Services Section
Criminal Justice Information
Services Division

Enclosures (2)

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b) (1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;
- (b) (2) related solely to the internal personnel rules and practices of an agency;
- (b) (3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
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- (b) (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b) (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b) (7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
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- (b) (9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

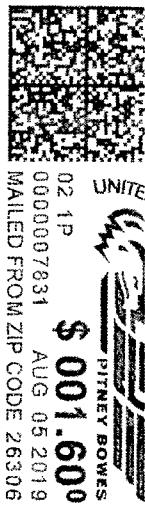
- (d) (5) information compiled in reasonable anticipation of a civil action proceeding;
- (j) (2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k) (1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k) (2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k) (3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k) (4) required by statute to be maintained and used solely as statistical records;
- (k) (5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k) (6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k) (7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

Clarksburg, WV 26306-0001

Official Business
Penalty for Private Use \$300

Mr. James Leonard Toney, 107698
Tucker Correctional Facility
Post Office Box 240
Tucker, AR 72168

7/25/09



EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b) (1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and (B) are in fact properly classified pursuant to such Executive order;
- (b) (2) related solely to the internal personnel rules and practices of an agency;
- (b) (3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b) (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b) (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b) (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b) (7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b) (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b) (9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d) (5) information compiled in reasonable anticipation of a civil action proceeding;
- (j) (2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k) (1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k) (2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k) (3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k) (4) required by statute to be maintained and used solely as statistical records;
- (k) (5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k) (6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k) (7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

EXHIBIT

G

FBI/DOJ

Eighth Circuit Court of Appeals

PRO SE Notice of Docket Activity

The following was filed on 03/22/2019

Case Name: James Toney v. Heath Dickson, et al
Case Number: 19-1273

Docket Text:

BRIEF FILED - APPELLANT BRIEF and documents filed by Mr. James L. Toney. w/service 03/28/2019 , Length: 7 pages, 4 copies made by USCA-8.

Brief of Jim Bailey, Heath Dickson and Keith Prince due on 04/22/2019 [4771650] [19-1273]

The following document(s) are associated with this transaction:

Document Description: Appellant's brief

Notice will be mailed to:

Mr. James L. Toney
TUCKER CORRECTIONAL FACILITY
107698
P.O. Box 240
Tucker, AR 72168-0240

Notice will be electronically mailed to:

Ms. Sara Lynn Monaghan: smonaghan@arml.org, tsquires@arml.org

EXHIBIT

H

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

JAMES L. TONEY

PLAINTIFF

v.

Civil No. 6:17-cv-06100

CORPORAL HEATH DICKSON,
Malvern Police Department ("MPD");
SERGEANT KEITH PRINCE, MPD;
ASSISTANT CHIEF JIM BAILEY, MPD;
and CHIEF OF POLICE DONNIE
TABER, MPD

DEFENDANTS

ORDER

Before the Court is Plaintiff's Motion to Set Aside Order Revoking IFP Status. (ECF No. 41). On May 8, 2018, the Court revoked Plaintiff's status as a pauper based on research indicating Plaintiff had previously filed three lawsuits which were dismissed as frivolous, malicious or failed to state a claim upon which relief may be granted. (ECF No. 37). In response to the order, Plaintiff filed the instant motion claiming that some of those lawsuits were filed by another inmate with the same name. The Court has reviewed the information presented by Plaintiff and determined that Plaintiff does not have three dismissals which would count as strikes against him.

Accordingly, Plaintiff's Motion to Set Aside Order Revoking IFP Status (ECF No. 41) is **GRANTED**. Plaintiff may continue to proceed in this lawsuit *in forma pauperis*.

The deadline to conduct discovery is extended until July 16, 2018. The deadline to file dispositive motions is extended until August 16, 2018.

IT IS SO ORDERED THIS 15th day of June 2018.

/s/ Barry A. Bryant
HON. BARRY A. BRYANT
UNITED STATES MAGISTRATE JUDGE

EXHIBIT

To: Clerk and P.K. Holmes III 5-9-2018

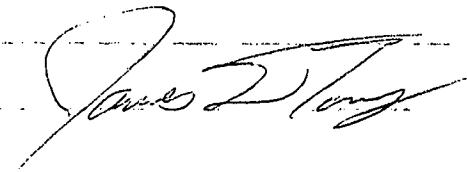
I am requesting the copy of Both Envelope's that
Toney V. Morris and Toney V. Hunter mail there
42.3 1983 Complaint Application in when they first
file. Please and a copy of the first page of the Application
Please!

My Facility Address:

Hot Spring County Jail
1 Detention Lane
Malvern, Arkansas

72104

"Thank you very much for your time. Please!"



5-9-2018

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
OFFICE OF THE CLERK
RICHARD SHEPPARD ARNOLD UNITED STATES COURTHOUSE
600 WEST CAPITOL AVENUE, SUITE A-149
LITTLE ROCK, ARKANSAS 72201

JAMES W. McCORMACK
CLERK

(501) 604-5351

June 25, 2018

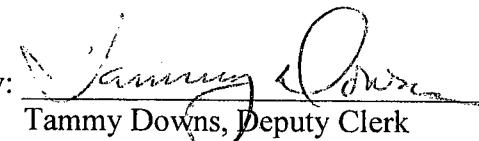
Mr. James L. Toney
ADC #107698
Hot Spring County Jail
1 Detention Lane
Malvern, Arkansas 72104

Re: Return of Documents

Dear Mr. Toney:

Enclosed for return is your original letter with attachments. The letter has not been filed. It appears you intended to mail this letter to the U.S. District Court for the Western District of Arkansas, where your cases are filed. Thank you.

JAMES W. McCORMACK, Clerk

By: 
Tammy Downs, Deputy Clerk

Enclosures

cc: James W. McCormack, Clerk

exempted from paying court fees. After the enactment of the PLRA, prisoners granted IFP status are required to pay the filing fee albeit in installments. 28 U.S.C. §1915(b). The PLRA provides that:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g); *see also Higgins v. Carpenter*, 258 F.3d 797, 800-801 (8th Cir. 2001) (holding that §1915(g) is constitutional). This provision has commonly become known as the “three strikes rule” or the “three strikes provision.”

In this case, the three strikes rule applies to Plaintiff. He has at least three previous actions ~~#1 one~~ *Eastern District* that qualify as strikes against him under 28 U.S.C. §1915(g). *Toney, et al. v. Norris, et al.*, Civil No. 5:95-cv-00021 (E.D. Ark.)(Report and Recommendation entered on January 30, 1995, recommending dismissal for failure to state an actionable claim. Adopted by ~~Order and Judgment~~ ~~#2 two~~ *Eastern District* entered on February 14, 1995. Dismissal affirmed on appeal May 25, 1995);¹ *Toney v. Hunter, et al.*, Civil No. 4:02-cv-00286 (E.D. Ark.)(Report and Recommendation enter on June 5, 2002, recommending dismissal for failure to state a claim and that the dismissal count as a strike. Adopted by Order and Judgment entered July 2, 2002, stating among other things, that the ~~#3 three~~ *Western District* dismissal counts as a strike. Appeal dismissed for failure to prosecute on November 10, 2002); *Toney v. Golden, et al.*, Civil No. 6:02-cv-06125 (W.D. Ark.)(Report and Recommendation entered on August 9, 2002, recommending dismissal on the grounds the claims are frivolous and fail to state claims upon which relief may be granted. Adopted by order entered August 27, 2002.

¹The PLRA applies to dismissals of cases as frivolous or for failure to state a claim prior to the PLRA's enactment on April 26, 1996. *See e.g., In re Tyler*, 110 F.3d 1032, 1036 (8th Cir. 1997)(applying three strikes rule to actions from 1992, 1993, and 1995).

Western District of Arkansas

Motion

6:17-cv-01700-PKH-BAB Toney
H. Dickson et al.

CASREF: MLF

Plaintiff Request
For Production Of
Discovery
Federal Rules of Civil Procedure
Rule 26. Rule 34.

U.S. District Court

Western District of Arkansas

Motion to Subpoena

Motion: To file for Discovery Federal Rules of Civil Procedure

Rule 26. Rule 34. Body Cam + Documentation

1, Defendant Keith Prince shall provide the Plaintiff with body cam on August, 23, 2017 time 9:10 PM. he gotten a call and left 903 Louise st. ^{#401} C. Also return at a later time I am requesting the body cam when Keith Prince return to 903 Louise st. ^{#401} C the same night along with Incident Report. Also body cam on August, 30, 2017 3 body cam's + 2 incident Report.

2, Defendant Heath Dickson shall provide the Plaintiff with the body cam when left for the Sullenberger and return to Plaintiff Address 903 Louise st. ^{#401} C on August, 23, 2017 i am requesting bodycam when Dickson came Back to 903 Louise st. ^{#401} C same Night.

Submitted To

Sara Monaghan
Attorney At Law
P.O. Box 38
North Little Rock, Ar

72115

Facility Address

James Leonard Toney
Hot Spring County Jail
1 Detention Lane
Malvern Arkansas

72104-2437

Respectfully Submitted by:
James Leonard Toney

Printed Name
James Leonard Toney
Signature

Date: 06-16-2018

In The United States District Court ~~August 30, 2018~~
Western District
Hot Springs Division

James Leonard Toney (Plaintiff)
v. Case No. 6:17-cv-06100-PKH-BAB
CPL Heath Dickson; Keith Prince sgt (Defendants)

Plaintiff Response to Defendant's Attorney
On Order Compelling Discovery for Body Cam

Defendant's Attorney have not sent anything on Sgt. Keith Prince No Body cam No Nothing and the Body cam is needed very much so to make A decision in the case Also for the Eight Circuit Court of Appeals to review and the U.S. Department of Justice Civil Rights Division Wash, DC 20530, Also this matter and others to U.S. Supreme Court Office of Professional conduct One 1st St. NW Wash, DC 20543, to review also U.S. Attorney General Committee on Professional Conduct 537 Robert F. Kennedy Bldg. 10th st & constitution Ave. NW Wash, DC 20530, also A Brief and Memorandum of law The Discovery and Body cam and Documentation Are Question of fact Preponderance of Evidence. (Needed)

All Have been sent A Brief of Acuse's. James Leonard Toney
Date: August 30, 2018 (On Dickson)

James Leonard Toney
Signature
ADC Tucker Unit
P.O. Box 240
Tucker Arkansas 72168
D. 10/11/18

UNITED STATES COURT OF APPELS
FOR THE EIGHTH CIRCUIT

No: _____

Plaintiff Request For
Production of Discovery
Rule 26. Rule 34.
Duty to Disclose Documents

James L Toney

Appellant

v.

Corporal Heath Dickson, Malvern Police Department (MPD), et al.
Appellees

Appeal from U.S. District Court for the Western District of Arkansas Hot Springs
6:17-cv-06100-PKH

Motion For Discovery of Body Cam Federal Rules of Civil
Procedure Rule 26. Rule 34.

You shall provide defendant Sgt. Keith Prince body cam to Plaintiff of the
August 23rd 2017 Incident Time 9:10 PM. he gotten a call and left 903
Louise st. ^{not} Plaintiff's home and return at a later time ^{not} am requesting
the body cam when sgt. Keith Prince return to 903 Louise st. ^{not} the same
night along with Incident Report.

Mr. James L Toney
Tucker Correctional Facility
P.O. Box 02410
Tucker, Arkansas, 72168
02410

Submitted To:
Sara Monaghan
Attorney at Law
P.O. Box 38
North Little Rock, Arkansas 72115

Respectfully Submitted by:

James L Toney printed
James L Toney signature

Date: 1/13/19

VERIFICATION

STATE OF ARKANSAS

COUNTY OF Jefferson

Petitioner, James L Toney, being first duly sworn under oath, presents that he has read and subscribed to the above and states that the information therein is true and correct.

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, on this 19 day of January, 20 19.

Mary Ann Coleman
Notary Public

My Commission Expires: October 27, 2021



CERTIFICATE OF SERVICE

I, James L Toney, Petitioner herein, do certify that a copy of this petition has been served this 13 day of January, 20 19, to Sara Monaghan, [REDACTED] Attorney, North Little Rock, Pulaski County, Arkansas, by placing same in the U.S. Mail with sufficient postage affixed to ensure delivery.

James L Toney
Petitioner, Pro Se
ADC# 107698

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

James L Toney

No. 19-1273

Appellant

v.

Corporal Heath Dickson, Malvern Police Department (MPD), et al.
Appellees

Plaintiff Request For
Production of Discovery
Rule 26, Rule 34.
Duty to Disclose Document's

Appeal from U.S. District Court for the Western District of Arkansas Hot Springs
6:17-cv-06100-PKH

Motion For Discovery of National Crime Information Center
Federal Rules of Civil Procedure Rule 26. Rule 34.

You shall provide Data and every records for the year of 2017
on myself James L Toney or just the month of August 2017
from: NCIC, DATA, Base They have all info, they have
to show everything they dont delete anything.
Thank you for your co-operation!"

Mr. James L Toney
Tucker Correctional Facility
P.O. Box 240
Tucker, Arkansas 72168
0240

Submitted To:
Sara Monaghan
Attorney at Law
P.O. Box 38
North Little Rock, Arkansas
72115

Respectfully Submitted by:
Mr. James L Toney printed
James L Toney signature

Date: 1-13-19

VERIFICATION

STATE OF ARKANSAS

COUNTY OF Jefferson

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Notary Public

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James L Toney
Petitioner, Pro Se
ADC# 107698