

IN THE SUPREME COURT OF THE UNITED  
STATES

ANTHONY REED

PETITIONER

VS.

DEXTER PAYNE, DIRECTOR

RESPONDENT

ARMED & DANGEROUS  
DEPARTMENT OF CORRECTIONS

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APPENDICES

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UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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No: 20-2111

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Anthony Reed

Plaintiff - Appellant

v.

Dexter Payne, Director, Arkansas Department of Correction

Defendant - Appellee

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Appeal from U.S. District Court for the Eastern District of Arkansas - Pine Bluff  
(5:06-cv-00291-BSM)

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**JUDGMENT**

Before COLLOTON, WOLLMAN, and KOBES, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed. The motion to proceed on appeal in forma pauperis is denied as moot.

September 30, 2020

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

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/s/ Michael E. Gans

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

**ANTHONY REED,  
ADC #91194**

**PETITIONER**

**v.**

**CASE NO. 5:06-CV-00291 BSM**

**LARRY NORRIS**

**RESPONDENT**

**ORDER**

Anthony Reed's motion for relief from the judgment [Doc. No. 31] is denied because it is untimely. *See* Fed. R. Civ. P. 60(c). The judgment [Doc. No. 16] was entered on April 24, 2007, and the motion was not filed until April 20, 2020, nearly thirteen years later, and nearly ten years after the Eight Circuit denied leave to file a successive habeas petition [Doc. No. 30].

IT IS SO ORDERED this 11th day of May, 2020.

  
UNITED STATES DISTRICT JUDGE

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

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No: 10-1278

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Anthony Reed,

Petitioner

5:06cv00291 HDY

v.

Ray Hobbs,

Respondent

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Appeal from U.S. District Court for the Eastern District of Arkansas - Pine Bluff

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**JUDGMENT**

Before BOWMAN, WOLLMAN, and LOKEN, Circuit Judges.

The petition for authorization to file a successive habeas application in the district court is denied. Mandate shall issue forthwith.

May 07, 2010

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

---

/s/ Michael E. Gans

**United States Court of Appeals**  
***For The Eighth Circuit***  
Thomas F. Eagleton U.S. Courthouse  
111 South 10th Street, Room 24.329  
**St. Louis, Missouri 63102**

**Michael E. Gans**  
*Clerk of Court*

**VOICE (314) 244-2400**  
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May 07, 2010

Mr. Anthony Reed  
ARKANSAS DEPARTMENT OF CORRECTION  
91194  
Maximum Security Correctional Facility  
2501 State Farm Road  
Tucker, AR 72168-8713

RE: 10-1278 Anthony Reed v. Ray Hobbs

Dear Mr. Reed:

Enclosed is a dispositive order entered today at the direction of the court.

Pursuant to Section 106 of the Antiterrorism and Effective Death Penalty Act of 1996, the grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

Michael E. Gans  
Clerk of Court

DMS

Enclosure(s)

cc: Mr. Brent Gasper  
Ms. Kelly Hill  
Mr. Jim McCormack  
Mr. Dustin McDaniel

District Court/Agency Case Number(s):



8cc-cmecf-nda@ck8.uscourts.  
gov  
05/07/2010 02:41 PM

To  
cc  
bcc

Subject 10-1278 Anthony Reed v. Ray Hobbs "judgment filed denying  
for successive habeas petition"

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### **Eighth Circuit Court of Appeals**

#### **Notice of Docket Activity**

The following transaction was filed on 05/07/2010

**Case Name:** Anthony Reed v. Ray Hobbs  
**Case Number:** 10-1278  
**Document(s):** Document(s)

#### **Docket Text:**

JUDGMENT FILED - denying [3632280-2] petition for successive habeas petition filed by Petitioner Mr. Anthony Reed. Mandate to issue forthwith., DENIED. PASCO M. BOWMAN, ROGER L. WOLLMAN and JAMES B. LOKEN Adp May 2010 [3662681] [10-1278] (DMS)

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

**Document Description:** Cover Letter

#### **Original Filename:**

/opt/ACECF/live/forms/dsharpless\_101278\_3662681\_GeneralCoverLetters\_122.pdf

#### **Electronic Document Stamp:**

[STAMP acecfStamp\_ID=1105112566 [Date=05/07/2010] [FileNumber=3662681-0]  
[58cdf189dca48e309a16d00eae2fa35780e8e1c44106b6506f698dbcb8613e34004c1902e7955573  
f8d2cd51e99326107609d29bf034b4376bf04ea2f34c120f]]

#### **Recipients:**

- Mr. Gasper, Brent, Assistant Attorney General
- Ms. Hill, Kelly
- Mr. McCormack, Jim, Clerk of Court
- Mr. McDaniel, Dustin
- Mr. Reed, Anthony

**Document Description:** Judgment

**Original Filename:**

/opt/ACECF/live/forms/dsharpless\_101278\_3662681\_JudgmentSuccessiveHabeas\_129.pdf

**Electronic Document Stamp:**

[STAMP acecfStamp\_ID=1105112566 [Date=05/07/2010] [FileNumber=3662681-1]  
[3aa3db98b14085674664104f5c5dbf948fe88f4c77b4eacd2d97b8870c96e29782dd3fafd923352d  
41a68681aea4bcfdbd1b769162ce6e319edd3629663156fb]]

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The following information is for the use of court personnel:

**DOCKET ENTRY ID:** 3662681

**RELIEF(S) DOCKETED:**

for successive habeas petition  
denied -

**DOCKET PART(S) ADDED:** 4145789, 4090920, 4145790, 4145791

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

ANTHONY REED

PETITIONER

v.

NO. 5:06CV00291 HDY

LARRY NORRIS, Director of the  
Arkansas Department of Correction

RESPONDENT

**MEMORANDUM OPINION AND ORDER**

STATE COURT PROCEEDINGS. The record reflects that in November of 2000, petitioner Anthony Reed ("Reed") was convicted by a Jefferson County, Arkansas, Circuit Court jury of one count of aggravated robbery, one count of theft of property, and two counts of second degree battery for his conduct in two separate incidents on the same night in July of 1999. See Reed v. State, 2002 WL 273655 (Ark.App. 2002).<sup>1</sup> He appealed the judgment of conviction to the Arkansas Court of Appeals and maintained that there was insufficient evidence to support his convictions of aggravated robbery and theft of property. Despite his assertion of error, the state Court of Appeals affirmed the judgment of conviction. See Id.

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1

As the Court will more fully explain in footnote four, one of the counts of second degree battery was subsequently merged with the one count of aggravated robbery. See Document 5, Exhibit G at 305-306.



In April of 2002, Reed filed a trial court petition for post-conviction relief pursuant to Arkansas Rule of Criminal Procedure 37. In that submission, he challenged the representation afforded by his trial attorney. The trial judge conducted a hearing on the petition and denied it in September of 2003. Reed appealed the denial of his petition to the state Supreme Court. When he failed to file a "complying brief as required by [an order of the state Supreme Court]," his appeal was dismissed and the denial of his petition was affirmed on account of his "noncompliance in accordance with Ark. Sup.Ct. R. 4-2(b)(3)." See Reed v. State, 2006 WL 137232 at 2 (Ark. S.Ct. 2006).

FEDERAL COURT PROCEEDINGS. In November of 2006, Reed filed the pending pro se petition for writ of habeas corpus pursuant to 28 U.S.C. 2254. In the submission, he advanced the following claims: (1) the trial judge erred in using the same jury to decide criminal offenses arising from two separate incidents; (2) Reed's trial attorney was ineffective when he informed potential jurors of Reed's prior felony convictions; (3) the evidence to support Reed's convictions of aggravated robbery and theft of property was insufficient; and (4) the State failed to disclose exculpatory evidence, and counsel was ineffective when he failed to obtain and offer the evidence. In connection with Reed's third claim, i.e. his challenge to the sufficiency of the evidence supporting his convictions of aggravated robbery and theft of property, he submitted a copy of an affidavit signed by one of the victims, John E. Price ("Price"). See Document 2 at 11. In the affidavit, Price appears to recant the testimony he gave at Reed's trial.

In December of 2006, respondent Larry Norris ("Norris") submitted a response to Reed's petition. Norris first maintained that claims one, two, and four of the petition should be denied because they are procedurally barred from federal court review. With regard to claim three, he maintained that it was correctly decided by the state Court of Appeals. He alternatively maintained that Reed cannot show that the decision of the state Court of Appeals on claim three was contrary to, or involved an unreasonable application of, clearly established federal law as determined by the United States Supreme Court. Norris additionally maintained that Reed cannot show that the decision of the state Court of Appeals on that claim was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings. With regard to Price's alleged recantation, Norris maintained that it should be disregarded.<sup>2</sup>

The Court briefly examined the record in this proceeding and determined that Reed should be notified that Norris was seeking the dismissal of the petition because, inter alia, three of the claims contained in it are allegedly procedurally barred from federal court review. The Court so notified Reed and invited him to submit a reply in which he explained why his petition should not be dismissed.

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2

Norris maintained that "[t]o the extent [the] Court views [the affidavit] as a recantation, it should have no bearing on this case." See Document 5 at 6. Norris additionally maintained the following: "Recantations are hardly reliable evidence of innocence. They are viewed with a 'considerable element of skepticism.' [Citation omitted]. Their value is not to establish hard fact, for they can never do that alone. Rather, they possess only impeachment value. The reason is obvious. Inherent in any recantation is the admission that the recanting witness 'either is lying now, was lying then, or lied both times.'" See Id.

Reed accepted the invitation of the Court by submitting a reply. In that submission, he appeared to acknowledge that he had procedurally defaulted claims one, two, and four. He nevertheless maintained that the claims should be considered on the merits because he is not an attorney and because he is actually innocent of the offenses; he specifically maintained the following:

Petitioner apologizes for being procedurally barred ... and the reason Petitioner asks this Honorable Court to [hear] these violations is because a constitutional violation occurred that convicted a person who was actually innocent of the crime. Petitioner also was given a chance to comply with Ark. Sup. Ct. R. 4-2. Petitioner also wants the Court to notice that Petitioner's legal skills fall below an attorney's. Petitioner humbly asked the Arkansas Supreme Court to hear his grounds. Petitioner just couldn't meet the compliance rule.

See Document 10 at 2. He also maintained that claim three should be considered, and relief granted accordingly, because the decision of the state Court of Appeals was based on an unreasonable determination of the facts in light of the evidence presented.

The Court examined the record in this proceeding and made the following findings and conclusions regarding claims one, two, and four. First, Reed never raised claims one and four in state court and thus procedurally defaulted the claims. Second, although he raised claim two in his trial court petition for post-conviction relief, he failed to obtain an appellate court ruling on the claim. The Court therefore concluded that he had procedurally defaulted that claim as well.

Having found that Reed procedurally defaulted claims one, two, and four, the question was whether he could show cause for the procedural defaults. Although he maintained that his legal skills are inadequate, it was clear that a prisoner's pro se status and limited education do not constitute sufficient cause to excuse a procedural default. Thus, the Court found that his assertion did not excuse his procedural defaults.

Reed additionally maintained that he is actually innocent of the offenses and offered Price's affidavit in support of that assertion. The Court again examined the record in this proceeding and assumed without deciding that in light of the representations contained in Price's affidavit, Reed had satisfied the "actual innocence" standard of Schlup v. Delo, 513 U.S. 298 (1995).<sup>3</sup> Specifically, the Court assumed without deciding that on the basis of Price's representations, it is more likely than not that no reasonable juror would have found Reed guilty of aggravated robbery and theft of property beyond a reasonable doubt. Given the foregoing assumption, he was permitted to pass through the Schlup v. Delo "gateway." The Court ordered Norris to submit an amended response in which he addressed claims one, two, and four on the merits and, if desired, to supplement his response to claim three.

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In Schlup v. Delo, the United States Supreme Court recognized that a showing of actual innocence can serve as a "gateway" through which a petitioner can obtain review of otherwise procedurally defaulted claims. Schlup v. Delo holds that a prisoner asserting actual innocence as a "gateway" to defaulted claims must establish that, "in light of new evidence, 'it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt.'" See House v. Bell, —U.S.—, 126 S.Ct. 2064, 2076-2077, 165 L.Ed.2d 1 (2006) [quoting Schlup v. Delo, 513 U.S. at 327].

Norris thereafter submitted an amended response to Reed's petition. Norris correctly noted at the outset of his response that "[the] Court did not explicitly rule on whether [Reed] had made [an actual innocence] showing ..." See Document 13 at 2. Norris again maintained that claims one, two, and four were procedurally barred from federal court review because Reed had procedurally defaulted the claims and could show neither cause for the procedural defaults nor actual innocence. Norris alternatively addressed claims one, two, and four on the merits. In sum, he maintained that Reed was not entitled to relief on those claims.

The Court has now had an opportunity to thoroughly examine the parties' submissions. For the reasons that follow, the Court finds that Reed's petition should be denied and dismissed and judgment entered for Norris.

PROCEDURAL BAR AND ACTUAL INNOCENCE. The Court previously found that Reed procedurally defaulted claims one, two, and four, and he cannot show cause for his procedural defaults. As the Court noted above, a showing of actual innocence, though not true cause for a procedural default, can serve as a "gateway" through which a petitioner can obtain federal court review of an otherwise procedurally defaulted claim. As Norris correctly noted in his amended response, the Court did not explicitly rule on whether Reed made a showing of actual innocence; instead, the Court simply assumed that he had. On further review, the Court finds that he has not made a showing of actual innocence.

On the night of July 24, 1999, and into the morning hours of July 25, 1999, Reed, Sylvester Brown ("Brown"), Price and several females were at Reed's house. At some point during the night, Brown struck Price with a baseball bat. Brown, accompanied by Reed, thereafter took Price's truck without his permission. Reed was subsequently tried as "an accomplice with respect to the offenses of aggravated robbery and theft of property committed against ... Price." See Reed v. State, 2002 WL 273655 at 1.<sup>4</sup> At trial, Price did not specifically testify that he was beaten and/or robbed by Reed. When asked what Reed did during the incident, Price testified that Reed "just intimidated me, bullied me." See Document 5, Exhibit G at 166. When asked how Reed did that, Price testified that, "Well, he was present with the other guy [*i.e.*, Brown]. He was all in the house and I just had fear, ... He was present with them." See Id. Price was again asked how he was intimidated and bullied by Reed; Price testified that, "Maybe [Reed] push[ed] me and just-you know, put-trying to put fear in me basically." See Id. at 167. On the strength of Price's testimony, Reed was convicted of the two offenses.

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Reed's criminal prosecution sprang from two separate incidents that occurred on the same night in July of 1999. One incident involved Mr. Richard Fowler ("Fowler"), and Reed was charged with second degree battery and of being a felon in possession of a firearm for his conduct in that incident. The jury convicted Reed of second degree battery for the Fowler incident but acquitted Reed of being a felon in possession of a firearm for the Fowler incident. The other incident involved Price, and Reed was charged with second degree battery, aggravated robbery, and theft of property for his conduct in that incident. The jury convicted Reed of second degree battery, aggravated robbery, and theft of property for the Price incident. The second degree battery offense in the Price incident was subsequently merged with the aggravated robbery offense in the Price incident. See Document 5, Exhibit G at 305-306. As best the Court can tell, Reed has never challenged his criminal liability for the Fowler incident. Reed's sole challenge has been to his convictions for aggravated robbery and theft of property in the Price incident.

On direct appeal, the state Court of Appeals was called upon to address the evidence supporting Reed's convictions. The state Court of Appeals found as follows:

... [Price], a disabled Vietnam veteran, was driving in his truck when he was flagged down by [Brown]. Price picked Brown up, and they drove to [Reed's] residence where Brown was also staying. ... Price testified that [Reed] was there when they arrived, as well as [Reed's] and Brown's girlfriends. Price said that he stayed there with them all afternoon and into the evening hours and that he allowed [Reed] and Brown to borrow his truck a couple of times during the course of his visit. Price testified that all was well until one of the women complained that he was talking too much. At that point, Brown brandished a bloody baseball bat and said that he had just beaten another man and that he would beat Price, too, if he did not act right. Price said that Brown wiped blood from the bat onto his tennis shoe and hit him with the bat. Price said that Brown also told him that he was going to keep Price's truck, that Brown refused to return the keys, and that Brown and [Reed] left in the truck for a while. Price further testified that he was held captive and beaten by Brown and the women throughout the night. He said that [Reed] did not beat him, but that [Reed] did push him, bully, intimidate, and "put fear in" him. Price said that he managed to escape the next day by running out of the house and jumping into a vehicle of an acquaintance. Price's truck was found damaged several days later.

...

A person commits aggravated robbery if he commits robbery and is armed with a deadly weapon or represents by word or conduct that he is so armed. ... A person commits the offense of robbery if, with the purpose of committing a felony or misdemeanor theft, he employs or threatens to immediately employ physical force upon another. ... "Physical force" means any bodily impact, restraint, or confinement or threat thereof. ...

A person commits theft of property if he knowingly takes or exercises unauthorized control over the property of another person with the purpose of depriving the owner of that property. ...

A defendant may be found guilty not only of his own conduct, but also the conduct of his accomplice. ... An accomplice is one who directly participates in the commission of an offense or who, with the purpose of promoting or facilitating the commission of an offense, aids, agrees to aid, or attempts to aid the other person in planning or committing the offense. ... The presence of an accused in the proximity of a crime, opportunity, and association with a person involved in the crime in a manner suggestive of joint participation are relevant factors in determining the connection of an accomplice with the crime. ... When two persons assist one another in the commission of a crime, each is an accomplice and criminally liable for the conduct of both. A participant cannot disclaim responsibility because he did not personally take part in every act that went to make up the crime as a whole. ...

...

... [T]he evidence shows that ... Price was held captive, beaten, and robbed of his truck. These events took place at [Reed's] own home. Although [Reed] did not take part in every wrongful act, there was evidence that [Reed] pushed, threatened, and bullied ... Price during the ordeal and that [Reed] rode in the stolen truck with [Brown]. Moreover, there was evidence that, when the police came to his house, [Reed] attempted to flee out of the back door. Evidence of flight to avoid arrest may be considered by the jury as being corroborative of guilt. ... We think the jury could find that [Reed's] level of participation went beyond merely being present while the crimes were committed. ...

See Reed v. State, 2002 WL 273655 at 1-2.

In March of 2003, Price signed an affidavit containing the following representations:

[Reed] did not do any bodily harm to me. [Reed] had nothing to do with the incident that [happened] to me. He did not rob me or [steal] any of my property. ... [Reed] was not the one that did it. It was [Brown]. I do so swear that ... Reed was not the cause of this problem.



See Document 2 at 11. The Court accepts that the representations contained in the affidavit are Price's and that he signed the affidavit.

Reed's assertion of actual innocence is built entirely upon the representations contained in Price's affidavit. At first blush, it appears from the affidavit that Price has recanted his trial testimony and undercut the basis for Reed's convictions of aggravated robbery and theft of property. Upon closer examination, though, and for the reasons that follow, the Court finds that Price has not truly recanted the substance of his trial testimony. Thus, it cannot be said that Reed has satisfied the Schlup v. Delo standard.

At the outset, the Court notes that although recanted testimony can warrant relief, Price's affidavit is viewed with great suspicion. Price signed his affidavit almost four years ago between the time Reed filed his trial court petition for post-conviction relief and the time the trial judge denied the petition. The Court has no idea when Reed obtained the affidavit. The record is silent as to whether Reed, once he obtained the affidavit, ever submitted it to the state courts of Arkansas. This proceeding appears to be the first one in which the affidavit was ever submitted for judicial consideration. His failure to present the affidavit to the state courts of Arkansas is akin to a procedural default and would justify the Court in disregarding the affidavit. The Court will nevertheless consider the affidavit because of the confusion regarding whether he ever submitted it to the state courts of Arkansas and, as the Court will explain, the representations contained in the affidavit do not warrant relief.

Turning to the representations contained in the affidavit, the Court is not convinced that Price has truly recanted his trial testimony. First, Price represents in his affidavit that Reed "did not do any bodily harm to [Price]." See Document 2 at 11. That representation is consistent with Price's trial testimony. Price never testified that he was beaten or struck by Reed. Price testified that he was intimidated and/or bullied by Reed. It is true that the record contains a reference to Reed possibly pushing Price, but Price is not at all clear whether that actually happened. See Document 5, Exhibit G at 167 ("[m]aybe [Reed] push[ed] me ...").

Second, Price represents that Reed did not have anything to do with the attack and did not rob or steal from Price. That representation is also consistent with Price's trial testimony. Price never testified that he was beaten or struck by Reed nor did Price testify that Reed robbed him or stole the truck. Price testified, and the state Court of Appeals found, that Brown was the one who beat Price and that it was Brown who took the truck; Reed simply intimidated and/or bullied Price and left with Brown when the truck was taken.

Third, Price represents that Reed was "not the one [who] did it. It was Poops, ... Brown. I do swear that ... Reed was not the cause of this problem." See Document 2 at 11. Again, that representation is consistent with Price's trial testimony. The record is quite clear: Brown was the "cause" of "this problem" in that he was the one who beat Price and took his truck. Reed was simply an accomplice.

For these reasons, the Court finds that Price has not truly recanted his trial testimony. The representations contained in his affidavit are not new evidence because they are not truly at odds with his trial testimony. In light of the fact that the representations contained in the affidavit are not new evidence, it is unnecessary for the Court to consider whether it is “more likely than not that ... no reasonable juror would find [Reed] guilty beyond a reasonable doubt ...” See House v. Bell, 126 S.Ct. at 2077. Reed has failed to make a showing of actual innocence and has therefore failed to satisfy the Schlup v. Delo standard which, if satisfied, would permit consideration of the otherwise procedurally defaulted claims. Having failed to satisfy that standard, claims one, two, and four are procedurally barred from federal court review.<sup>5</sup>

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Were the Court to consider the claims, it is clear that Reed would not be entitled to relief. With regard to claim one, i.e., his claim that the trial judge erred in using the same jury to decide criminal offenses arising from two separate incidents, Reed cannot show that the trial judge’s failure to sever the offenses rendered the trial fundamental unfair. See Wharton-El v. Nix, 38 F.3d 372 (8<sup>th</sup> Cir. 1994). It is possible to characterize the Fowler incident and the Price incident as involving a common scheme, plan, or occurrence.

With regard to claim two, i.e., Reed’s claim that his trial attorney was ineffective when he informed potential jurors of Reed’s prior felony conviction, he cannot show that counsel’s decision to so inform the jury was error, prejudicial or otherwise. The Court is satisfied that counsel’s decision was a strategic one, particularly since the trial judge told the prospective jurors at the outset of voir dire that Reed was charged with, inter alia, being a felon in possession of a firearm. See Document 5, Exhibit G at 72. Moreover, the Court credits counsel’s testimony on that issue during the hearing conducted on Reed’s petition for post-conviction relief. See Document 13, Exhibit I at 94-96.

With regard to claim four, i.e., Reed’s claim that the State failed to disclose exculpatory evidence, specifically, a statement by a co-defendant, and that counsel was ineffective when he failed to obtain and offer the evidence, Reed can show no error. First, it is clear that Reed knew of the statement prior to trial. See Document 5, Exhibit G at 65-67. Second, the Court credits counsel’s explanation for not introducing the statement. See Document 13, Exhibit I at 97-99.

CLAIM THREE. Reed maintains that the evidence to support his convictions for aggravated robbery and theft of property was insufficient. This claim is properly before the Court; the only inquiry for the Court involves the application of 28 U.S.C. 2254(d).

28 U.S.C. 2254(d) provides that a petition shall not be granted with regard to any claim that was adjudicated on the merits by the state courts unless the adjudication--

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Did the adjudication of this claim by the state Court of Appeals result in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law? The Court thinks not. The state appellate court admittedly did not cite Jackson v. Virginia, 443 U.S. 307 (1979), but “[a] reasonable application of established federal law ‘does not require citation of [United States Supreme Court] cases-indeed, it does not even require *awareness* of [these] cases, so long as neither the reasoning nor the result of the state-court decision contradicts them.’” Cox v. Burger, 398 F.3d 1025, 1030 (8<sup>th</sup> Cir. 2005). [Citations omitted; Emphasis in original]. The state appellate court applied the teachings of Jackson v. Virginia and did so in an objectively reasonable manner; neither the reasoning nor the result contradicts Jackson v. Virginia.

Reed has also not shown that the adjudication of the claim by the state Court of Appeals resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented. The state appellate court found the following with regard to the evidence:

Although [Reed] did not take part in every wrongful act, there was evidence that [Reed] pushed, threatened, and bullied ... Price during the ordeal and that [Reed] rode in the stolen truck with [Brown]. Moreover, there was evidence that, when the police came to his house, [Reed] attempted to flee out of the back door. Evidence of flight to avoid arrest may be considered by the jury as being corroborative of guilt. ... We think the jury could find that [Reed's] level of participation went beyond merely being present while the crimes were committed. ...

See Reed v. State, 2002 WL 273655 at 2. Thus, the state appellate court could find the evidence sufficient to support his convictions of aggravated robbery and theft of property for the Price incident.

Admittedly, the resolution of this proceeding is made more difficult by the presence of Price's affidavit. Reed relies heavily upon the representations contained in the affidavit in maintaining that the evidence to support his convictions of aggravated robbery and theft of property for the Price incident is insufficient. As the Court noted above, but will not repeat here, Price has not truly recanted his trial testimony. The representations contained in his affidavit are not new evidence because they are not truly at odds with his trial testimony.

Given the foregoing, the undersigned finds that Reed cannot overcome the barrier posed by 28 U.S.C. 2254(d). His claim that the evidence supporting his convictions of aggravated robbery and theft of property for the Price incident is therefore denied and dismissed.

CONCLUSION. On the basis of the foregoing, the Court finds that Reed's petition is denied and dismissed. Claims one, two, and four of his petition are procedurally barred from federal court review, and Reed cannot overcome the barrier posed by 28 U.S.C. 2254(d) with regard to claim three. Judgment will be entered for Norris.

IT IS SO ORDERED this 24 day of April, 2007.



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UNITED STATES MAGISTRATE JUDGE

IN THE CIRCUIT COURT OF Jefferson COUNTY, ARKANSAS  
5th DIVISION

ANTHONY REED

PETITIONER

VS

NO. 35CN-19-37

WARDEN W. STRAUEN  
 DIRECTOR OF THE ARKANSAS  
 DEPARTMENT OF CORRECTION

RESPONDENT

HABEAS CORPUS PETITION  
 (ACA § 16-112-101-123)

Comes now the Petitioner, Anthony Reed, ADC # 91194,  
 and for his/her pro se Habeas Corpus Petition for absolute dismissal of the criminal conviction  
 against him/her, alleges and states:

1. That Petitioner, an indigent, is a prisoner in custody of the Arkansas Department  
 of Correction, Cummins Unit, under sentence of the Circuit Court of  
Jefferson County, Arkansas, having been sentenced on November 9th,  
2000, for conviction of a felony.

2. That said conviction was based on an information or warrant filed against  
 Defendant/Petitioner on or about October 31, 2000, accusing the  
 Defendant/Petitioner of the offense(s) of (3) 2nd Degree BATTERY (1) Agg. Assault  
(2) felon possession of firearm (1) Agg. Robbery (1) Theft of property  
5-13-2025-13-201  
 in violation of Ark. Code Ann. 5-73-103, 5-12-103-5-34-103, a class D, B, Y felony.

3. That Petitioner is being held unlawfully and this Court has jurisdiction pursuant to  
 the Arkansas Constitution and Arkansas Code Annotated 16-112-101, et seq.

4. That the Trial Court lacked jurisdiction and/or the Petitioner is held pursuant to an  
 invalid conviction. Petitioner bases this allegation upon the following facts:

(1)

- 1 -

FILED

JAN 16 2019

LAFAYETTE WOODS, SR.  
 Circuit Clerk  
 JEFFERSON COUNTY, ARKANSAS

@ 11:15

16-83-405 10. Authority to file - the Constitutional provision permitting prosecution of offenses by information filed by the prosecuting attorney requires that information be filed in the name of the prosecuting attorney, and not filed in a Deputy prosecuting attorney and name is Vaidi Const. Amend. 21 Johnson v. State (1939) 199 Ark. 196. 133 S.W.2d 15.

EXHIBIT (A) ATTACHED:

5. That Petitioner is entitled to have the conviction dismissed with an absolute bar to prosecution.

WHEREFORE, Petitioner prays this Court enter an order dismissing his/her conviction with prejudice; to set a hearing on the motion herein; to appoint an attorney for Petitioner for such hearing, and for all relief which may be just and proper.

Respectfully submitted,

Anthony REED # 91194  
Petitioner, pro se

P.O. BOX 500

Campbell Unit  
Arkansas Department of Correction

Grady, AR 71644

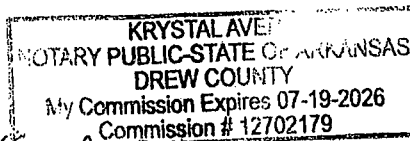


STATE OF ARKANSAS

COUNTY OF

Drew

) SS

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, on this 6 day ofJanuary, 20 19.Krystal Avey  
NOTARY PUBLICMy Commission Expires: 07-19-2026CERTIFICATE OF SERVICE

This is to certify that on this 6 day of Jan, 20 19, a copy of the foregoing motion was mailed to the Prosecuting Attorney for Jefferson County.

Anthony Reed  
PETITIONERADC # 91194

**CRIMINAL INFORMATION**  
**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS**  
**ELEVENTH WEST JUDICIAL DISTRICT, SECOND DIVISION**

STATE OF ARKANSAS  
V.S.

Case No. CR-99-680-2

ANTHONY LEE REED

Filed: July 30, 1999  
Amended: August 5, 1999  
Amended: October 31, 2000

Amended Information? { X } Multiple D=s Charged TOGETHER { X } or Multiple D=s Charged SEPARATELY { }

If Yes:

Co-D=s

Related Case #s

Dropping Offense(s)? \_\_\_\_\_ 2- SYLVESTER BOBBY BROWN  
Adding Offenses(s) \_\_\_\_\_ 3- CARNEIL FRANKLIN  
Changing Offense(s)? \_\_\_\_\_ 4- TIFFANY BANKS  
D Charged as Habitual? \_\_\_\_\_ 5-

Defendant's Full Name	Date of Birth	Race	Sex	SID #	Arrest Date
ANTHONY LEE REED	01/23/72	B	M	575578	07/27/99

Address (Street, City, State, Zip)	SS#	Driver's License No.
WESTERN DR. OR 3606 W. 16 <sup>TH</sup> PINE BLUFF, AR 71602 OR 71603	429-25-6957	N/A
	Arrest Tracking #	Prosecutor's File #
	N/A	

Alias 1	Alias 2	Alias 3
GEE LOVE	ANT	

I, Stevan B. Dalrymple, Prosecuting Attorney within and for the Eleventh Judicial District West of the State of Arkansas, comprised of Jefferson Counties, in the name and by the authority of the State of Arkansas, on oath, accuse the above named Defendant(s) of the following crime(s):

Code #	Offense	A/S/C	Offense Date	Counts	F/M	Class
5-13-202	BATTERY IN THE SECOND DEGREE		07/13/99 & 07/25/99	3	F	D
5-13-204	AGGRAVATED ASSAULT		07/13/99	1	F	D
5-73-103	FELON IN POSSESSION OF A FIREARM		07/13/99 & 07/25/99	2	F	B
5-12-103	AGGRAVATED ROBBERY		07/25/99	1	F	Y
5-36-103	THEFT OF PROPERTY		07/25/99	1	F	B
✓						

(4)

8

Committed as follows: Count # 1 Offense: BATTERY IN THE SECOND DEGREE

The Defendant on or about 07/13/99, in Jefferson County, Arkansas, did then and there, unlawfully, with the purpose of causing physical injury to another person, cause serious physical injury to Jerome Grant, against the peace and dignity of the State of Arkansas.

Committed as follows: Count # 2 Offense: AGGRAVATED ASSAULT

The Defendant on or about 07/13/99, in Jefferson County, Arkansas, did then and there, unlawfully, under circumstances manifesting extreme indifference to the value of human life, purposely engage in conduct that created a substantial danger of death or serious physical injury to Jerome Grant, against the peace and dignity of the State of Arkansas.

Committed as follows: Count # 3 Offense: FELON IN POSSESSION OF A FIREARM

The Defendant on or about 07/25/99, in Jefferson County, Arkansas, did then and there, unlawfully, having been previously convicted of a felony, possess a firearm, to-wit: pistol, against the peace and dignity of the State of Arkansas.

Committed as follows: Count # 4 Offense: BATTERY IN THE SECOND DEGREE

The Defendant on or about 07/25/99, in Jefferson County, Arkansas, did then and there, unlawfully, with the purpose of causing physical injury to another person, cause serious physical injury to John Price, against the peace and dignity of the State of Arkansas.

Committed as follows: Count # 5 Offense: THEFT OF PROPERTY

The Defendant on or about 07/25/99, in Jefferson County, Arkansas, did then and there, unlawfully, and knowingly take unauthorized control over 1997 Nissan, having a value in excess of \$2,500 and being the property of John Price, with the purpose of depriving the owner of such property, against the peace and dignity of the State of Arkansas.

Committed as follows: Count # 6 Offense: AGGRAVATED ROBBERY

The Defendant on or about 07/25/99, in Jefferson County, Arkansas, did then and there, unlawfully, with the purpose of committing a theft or resisting apprehension immediately thereafter, employ or threaten to employ physical force upon John Price and at the time was armed with a deadly weapon or represented by word or conduct that he was so armed, against the peace and dignity of the State of Arkansas.

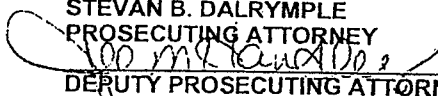
mitted as follows: Count # 7 Offense: ~~FELON IN POSSESSION OF A FIREARM~~

The Defendant on or about 07/13/99, in Jefferson County, Arkansas, did then and there, unlawfully, having been previously convicted of a felony, possess a firearm, to-wit: handgun, against the peace and dignity of the State of Arkansas.

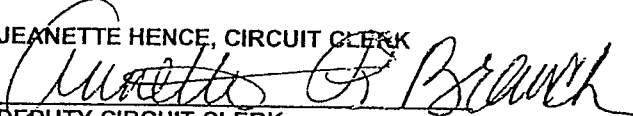
Committed as follows: Count # 8 Offense: BATTERY IN THE SECOND DEGREE

The Defendant on or about 07/25/99, in Jefferson County, Arkansas, did then and there, unlawfully, with the purpose of causing physical injury to another person, cause serious physical injury to Richard Fowler, against the peace and dignity of the State of Arkansas.

And I, Stevan B. Dalrymple, Prosecuting Attorney within and for the Eleventh Judicial Circuit of the State of Arkansas, of which Jefferson County is a part, on oath state: that the defendant Anthony Lee Reed has previously been convicted or found guilty of more than four (4) felonies, and upon conviction of the above named offense(s) should be punished under the provisions of Arkansas Code 5-4-501 as amended by Act 550 of 1993.

STEVAN B. DALRYMPLE  
PROSECUTING ATTORNEY  
  
DEPUTY PROSECUTING ATTORNEY

Subscribed and sworn before me this 30<sup>th</sup> day of October 2000.

JEANETTE HENCE, CIRCUIT CLERK  
BY:   
DEPUTY CIRCUIT CLERK

ORDER

Issue Bench Warrant and follow the below mentioned terms for release:  
BAIL

Defendant # 1 Execution of a bond in the amount of \$10,000 secured by deposit of the full amount in cash, or by other property or by obligation of qualified securities.

IT IS SO ORDERED.  
This 30<sup>th</sup> day of July 1999.

/s/ H.A. TAYLOR  
CIRCUIT JUDGE

7-30-2

69-406

(6). 10

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS  
ELEVENTH JUDICIAL DISTRICT, WEST - FIFTH DIVISION

ANTHONY REED  
Inmate # 091194

PETITIONER

v.

No. 35CV-19-37-5

W. STRAUGH, WARDEN  
ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

**ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS**

On this day comes on for consideration the pro se habeas corpus petition filed on January 16, 2019. From the examination of the pleadings and review of applicable law, the Court finds as follows:

In Case No. 35CR-99-860-2, the petitioner was convicted as an habitual offender and was sentenced to the Arkansas Department of Correction to serve 900 months for aggravated robbery, 240 months for theft of property, and 180 months for battery in the second degree.

Reed states that the criminal Information filed in 35CR-99-870-2 charging him with aggravated robbery, battery in the second degree, aggravated assault, theft of property, and felon in possession of a firearm is void because it was signed by a deputy prosecuting attorney, not the elected prosecuting attorney. He asks that the convictions be set aside, to be released from the Arkansas Department of Correction, and be awarded \$12,000,000.00 in damages.

To succeed on a petition for writ of habeas corpus, petitioner must show that the Judgment and Commitment Order is invalid on its face or that the trial court lacked jurisdiction. *Bryant v. Hobbs*, 2014 Ark. 287 (per curiam); *Cleveland v. Frazier*, 338 Ark. 581, 999 S.W.2d 188 (1999). The petitioner must make a showing, by affidavit or other evidence, of probable cause to believe he is illegally detained. *Abernathy v. Norris*, 2011 Ark. 335 (per curiam); *Birchett v. State*, 303 Ark. 220, 795 S.W.2d 53 (1990) (per curiam).

**FILED**

JUL 17 2019

LAFAYETTE WOODS, SR  
Circuit Clerk  
JEFFERSON COUNTY, ARKANSAS

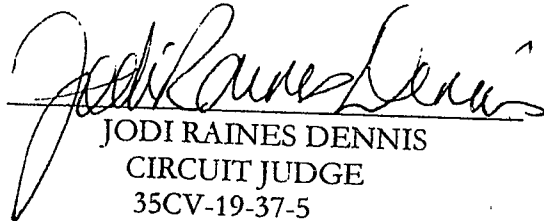
A habeas corpus is "limited to finding error on the face of the convictions." *Wallace v. Willock*, 301 Ark. 69, 781 S.W.2d 484 (1989). The petitioner failed to attach a certified copy of his judgment and commitment order or provide a legal excuse for the omission rendering the petition defective. *In re Beard*, 4 Ark. 9 (1842); *Ex Parte Royster*, 6 Ark. 28 (1845). The petitioner's claim is without merit; therefore, attaching a certified copy of the order would be futile.

Challenges to the sufficiency of the charging instrument are not jurisdictional and must be raised prior to trial. *Sanders v. Straughn*, 2014 Ark. 312, 439 S.W.3d 1 (2014). Petitioner's criminal Information was signed by a deputy prosecuting attorney. Arkansas law specifically grants a deputy prosecuting attorney the authority to sign an Information. A.C.A. § 16-21-113.

The allegation raised by petitioner does not offer any evidence establishing probable cause that he is being held illegally, that the trial court lacked jurisdiction, or that the commitment is invalid on its face.

The petition is DENIED AND DISMISSED.

IT IS SO ORDERED this 17<sup>th</sup> day of July 2019.

  
JODI RAINES DENNIS  
CIRCUIT JUDGE  
35CV-19-37-5

cc: Mr. Anthony Reed  
Inmate # 091194  
Tucker Maximum Security Unit - ADC  
2501 State Farm Road  
Tucker, AR 76128-8713

IN THE ARKANSAS SUPREME COURT

ANTHONY REED

APPELLANT

v. CASE NO. CV-19-1639

W. STRAUBIN, WARDEN

APPELLEE

AN APPEAL FROM THE  
CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS

HONORABLE JUDI RAINES DENNIS

CIRCUIT JUDGE

3SCV-2019-37-5

BRIEF OF THE APPELLANT

BY: Anthony Reed

ANTHONY REED #091194, PRO SE

2501 STATE FARM ROAD, MAX. SEC.

TUCKER, ARKANSAS 721168

## ARGUMENT

### (1) AUTHORITY TO FILE

THE CONSTITUTIONAL PROVISION PERMITTING PROSECUTION OF OFFENSES BY INFORMATION FILED BY THE PROSECUTING ATTORNEY REQUIRES THAT INFORMATIONS BE FILED IN THE NAME OF THE PROSECUTING ATTORNEY, AND ALTHOUGH A DEPUTY PROSECUTING ATTORNEY IS GENERALLY CLOTHED WITH ALL THE POWERS AND PRIVILEGES OF THE PROSECUTING ATTORNEY, HE MUST FILE AN INFORMATION IN THE NAME OF THE PROSECUTING ATTORNEY AND ONE FILED IN HIS OWN NAME IS VOID. R. 4, ADD. 2. THE ARKANSAS CONSTITUTION AMENDMENT NO. 21, STATES:

SECTION 1. PROSECUTION BY INDICTMENT OR INFORMATION - ALL OFFENSES HERETOFORE REQUIRED TO BE PROSECUTED BY INDICTMENT MAY BE PROSECUTED EITHER BY INDICTMENT BY A GRAND JURY OR INFORMATION FILED BY THE PROSECUTING ATTORNEY.

THE PROSECUTING ATTORNEY OF A COUNTY IS A QUASI JUDICIAL OFFICER, THE LAW HAS ENTRUSTED HIM WITH POWER, UPON WHAT HE DEEMS SUFFICIENT CAUSE, TO INSTITUTE PROSECUTIONS. HE TAKES THE PLACE OF A GRAND JURY; AND AS THE LAW IMPOSED UPON THE GRAND JURY THE DUTY OF DETERMINING WHETHER OR NOT SUFFICIENT "CAUSE" HAD BEEN SHOWN TO JUSTIFY AN INDICTMENT AGAINST THE ACCUSED, AND GAVE THEM NO AUTHORITY TO DEPUTE OTHER PERSONS TO DETERMINE THAT FACT AND MAKE A PRESENTMENT, SO THE LAW IMPOSES THIS DUTY ON THE



PROSECUTING ATTORNEY, AND GIVES HIM NO AUTHORITY TO CONFER THIS  
POWER ON ANOTHER PERSON. UNDER AMENDMENT NO. 21 TO THE CONSTITUTION,  
THE DEPUTY PROSECUTING ATTORNEY MUST, IF HE FILES INFORMATION, FILE  
IT IN THE NAME OF THE PROSECUTING ATTORNEY AND ONE FILED IN HIS  
OWN NAME IS VOID. JOHNSON V. STATE, 199 ARK. 196, 133 S.W.2D 15 (1939)

COMES NOW, I, ANTHONY REED WHO IS IN CUSTODY OF THE  
ARKANSAS DEPARTMENT OF CORRECTION HOPE AND PRAY THAT THE COURT  
FIND THE PROCESS DEFECTIVE IN SOME MATTER OR SUBSTANCE REQUIRED  
BY LAW AND RENDER THE PROCESS VOID. BECAUSE THE ALLEGATION RAISED  
ESTABLISHED PROBABLE CAUSE THAT PETITIONER IS BEING HELD ILLEGALLY  
AND THAT THE APPEAL SHOULD BE GRANTED, JUDGMENT VACATED AND  
THE CONVICTION SET ASIDE.

WHEREFORE, PETITIONER, ANTHONY REED RESPECTFULLY ASK THIS  
COURT TO GRANT HIS APPEAL IN ITS ENTIRETY. RESPECTFULLY I REQUEST.

RESPECTFULLY SUBMITTED

Anthony Reed

ANTHONY REED # 091194, PRO SE  
2501 STATE FARM ROAD, MAX. SEC.  
TUCKER, ARKANSAS 72168

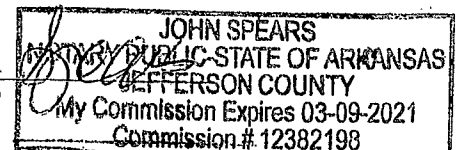
STATE OF ARKANSAS

COUNTY OF JEFFERSON

SUBSCRIBED AND SWORN TO BEFORE ME, A NOTARY PUBLIC, ON THE  
18<sup>th</sup> DAY OF August, 2019.

MY COMMISSION EXPIRES: 3-9-2021

John Spears  
NOTARY PUBLIC



# CV-19-639

IN THE SUPREME COURT OF ARKANSAS

ANTHONY L. REED

APPELLANT

VS.

CASE NO. CV-19-639

WILLIAM STRAUGHN

APPELLEE

AN APPEAL FROM THE  
JEFFERSON COUNTY CIRCUIT COURT

THE HONORABLE JODI R. DENNIS  
CIRCUIT JUDGE

BRIEF OF APPELLEE

Respectfully submitted,

LESLIE RUTLEDGE  
Attorney General

BY: ADAM JACKSON  
Arkansas Bar No. 2013176  
Assistant Attorney General  
323 Center Street, Suite 200  
Little Rock, Arkansas 72201  
(501) 682-1785 [phone]  
(501) 682-2083 [fax]  
adam.jackson@arkansasag.gov  
ATTORNEYS FOR APPELLEE

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**POINT TO BE RELIED UPON**

**I.**

The circuit court did not clearly err by denying Appellant's petition ..... 1

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### STATUTES AND RULES

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## STATEMENT OF THE CASE

Appellant is a prisoner in Appellee's custody at the Cummins Unit in Jefferson County, Arkansas. A Jefferson County jury convicted Appellant of one count each of aggravated robbery, theft of property, and felon in possession of a firearm, and two counts of second-degree battery. *Reed v. State*, CACR 01-707 (Ark. Ct. App. Feb. 27, 2002). He was sentenced, as a habitual offender, to an aggregate term of 75 years' imprisonment. *Id.*

On January 16, 2019, Appellant filed a petition seeking a writ of habeas corpus in Jefferson County Circuit Court. He argued that he was being held unlawfully because the charging information was signed by the deputy prosecuting attorney. (R. 3-4; Add. 1-2). On July 17, 2019, the circuit court dismissed Appellant's petition for two reasons. (R. 27-28; Add. 12-13). First, the court found that Appellant had failed to attach the judgment-and-commitment order, rendering the petition defective. (R. 28; Add. 13). Second, the court held that, even if Appellant had attached the order, Arkansas law permitted the deputy prosecuting attorney to sign the information. (R. 28; Add. 13). Subsequently, Appellant filed a notice of appeal on July 26, 2019. (R. 30; Add. 14).

On appeal, Appellant argues that his conviction is void because the deputy prosecuting attorney signed and filed the information. *See* Appellant's Brief, at

Arg. 1. Appellant is wrong, and this Court should affirm the circuit court's denial of habeas relief.

SoC 2

(17)

## ARGUMENT

I. The circuit court did not clearly err by denying Appellant's petition.

Appellant's sole point argues that his conviction is void because the deputy prosecuting attorney signed and filed the charging information rather than the elected prosecuting attorney. The circuit court denied Appellant habeas relief because he failed to attach the judgment-and-commitment order and the petition was without merit. The findings by the circuit court were not clearly erroneous.

A writ of habeas corpus is proper only when a judgment of conviction is invalid on its face or when a circuit court lacked jurisdiction over the cause. *E.g.*, *Gardner v. Hobbs*, 2014 Ark. 346, at 2, 439 S.W.3d 663, 665. The burden is on the petitioner to make that showing; otherwise, there is no basis for a finding that a writ of habeas corpus should issue. *E.g.*, *id.*, at 3, 439 S.W.3d at 665. A petitioner who does not proceed under Act 1780 of 2001 must plead either facial invalidity or lack of jurisdiction and must additionally make a showing by affidavit or other evidence of probable cause to believe that he is being illegally detained. *E.g.*, *Gardner*, 2014 Ark. 346, at 2, 439 S.W.3d at 665. Proceedings for the writ are not intended to require an extensive review of the record of the trial proceedings, and the appellate court's inquiry into the validity of the judgment is limited to the face of the commitment order. *E.g.*, *id.*, at 3, 439 S.W.3d at 666.



A circuit court's denial of habeas relief will not be reversed unless the court's findings are clearly erroneous. *E.g., Justus v. Hobbs*, 2013 Ark. 149, at 3. "A finding is clearly erroneous when, although there is evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Hobbs v. Gordon*, 2014 Ark. 225, at 5, 434 S.W.3d 364, 367.

Appellant has failed to demonstrate that the trial court lacked jurisdiction or that the judgment was illegal on its face because he did not attach the judgment-and-commitment order. *See generally* (R. 3-30; Add. 1-15). For that reason alone, he has failed to show probable cause to issue the writ. *See, e.g., Pennington v. Kelley*, 2017 Ark. 168, at 4, 518 S.W.3d 666, 669 (per curiam) (dismissing habeas appeal because petitioner failed to attach sentencing order to habeas petition). Thus, the circuit court's denial of relief on that basis is not clearly erroneous.

In the alternative, the circuit court did not clearly err by rejecting the claim on the merits. A challenge to who signed an information is not a claim concerning the facial validity of the judgment and does not implicate the trial court's jurisdiction. Consequently, the claim is not cognizable in habeas proceedings. *E.g., Anderson v. Kelley*, 2015 Ark. 411, at 5-6, 473 S.W.3d 537, 540-41 (per curiam). Indeed, a challenge to the information must be raised in circuit court, prior to trial. *E.g., Davis v. State*, 2011 Ark. 88, at 3 (denying habeas relief and

holding the proper time to object to the form or sufficiency of an information is prior to trial). A habeas proceeding does not afford a prisoner an opportunity to retry his or her case, and it is not a substitute for direct appeal or postconviction relief. *E.g., Baker v. Norris*, 369 Ark. 405, 413, 255 S.W.3d 466, 471 (2007). The appropriate time to raise a claim of a deficient information was prior to Appellant's trial. He failed to do as such and is not entitled to relief in a habeas proceeding.

Even if the claim were cognizable, it is meritless. A deputy prosecuting attorney is permitted to file an information in circuit court in the name of the prosecuting attorney. Ark. Code Ann. § 16-21-113(c)(1) (Supp. 1997). Here, the record clearly indicates that the deputy prosecuting attorney signed and filed the information on behalf, and in the name, of Stevan B. Dalrymple, the prosecuting attorney for the Eleventh Judicial Circuit. (R. 6-8; Add. 5-6). Thus, Appellant's claim is without merit. Consequently, the circuit court's denial of habeas relief was not clearly erroneous, and this Court should affirm.

### CONCLUSION

For the reasons stated herein and based on the authorities cited, Appellee respectfully submits that this case should be affirmed in all aspects.

**CERTIFICATE OF SERVICE**

I, Adam Jackson, certify that on September 18, 2019, the foregoing document has been mailed, by United States Postal Service, postage prepaid, to:

Mr. Anthony L. Reed  
ADC#91194  
Maximum Security Unit  
2501 State Farm Road  
Tucker, AR 72168

Honorable Jodi R. Dennis  
Circuit Judge  
Courthouse  
P. O. Box 8705  
Pine Bluff, AR 71601

/s/ Adam Jackson  
ADAM JACKSON

Cite as 2020 Ark. 52  
SUPREME COURT OF ARKANSAS  
No. CV-19-639

ANTHONY REED

APPELLANT

V.

W. STRAUGHN, WARDEN, ARKANSAS  
DEPARTMENT OF CORRECTION

APPELLEE

Opinion Delivered February 6, 2020

PRO SE APPEAL FROM THE  
JEFFERSON COUNTY CIRCUIT COURT  
[NO. 35CV-19-37]

HONORABLE JODI RAINES DENNIS,  
JUDGE

APPEAL DISMISSED.

---

JOHN DAN KEMP, Chief Justice

Appellant Anthony Reed appeals the circuit court's denial of his pro se petition for writ of habeas corpus filed pursuant to Arkansas Code Annotated sections 16-112-101 to 123 (Repl. 2016). Reed, who was incarcerated in Jefferson County when he filed his petition, lodged an appeal from its denial, and submitted his brief-in-chief, was later transferred to another prison facility and is currently incarcerated in Lincoln County.

Reed was found guilty in a jury trial of aggravated robbery, theft of property, felon in possession of a firearm, and two counts of second-degree battery. As a habitual offender, he was sentenced to an aggregate term of 900 months' imprisonment. The Arkansas Court of Appeals affirmed the convictions and sentences. *Reed v. State*, CACR 01-707 (Ark. App. Feb. 27, 2002) (unpublished).

Any petition for writ of habeas corpus to effect the release of a prisoner is properly addressed to the circuit court in which the prisoner is held in custody, unless the petition

is filed pursuant to Act 1780. See Ark. Code Ann. §§ 16-112-201 to -208 (Repl. 2016). Although a circuit court may have subject-matter jurisdiction to issue the writ, a court does not have personal jurisdiction to issue and make returnable before itself a writ of habeas corpus to release a petitioner held in another county. *Perry v. State*, 2018 Ark. 14, 535 S.W.3d 264; see *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991). Arkansas Code Annotated section 16-112-105 (Repl. 2016) requires that the writ be directed to the person in whose custody the petitioner is detained. *Id.* Accordingly, although Reed was incarcerated in Jefferson County when he filed the habeas petition and proceeded with this pending appeal, a writ of habeas corpus issued by the Jefferson County Circuit Court could not be returned because he is no longer within its jurisdiction.

Appeal dismissed.

HART, J., dissents.

JOSEPHINE LINKER HART, Justice, **dissenting**. I dissent for the reasons stated in *Ramirez v. Kelley*, 2019 Ark. 406, \_\_\_ S.W.3d \_\_\_ (Hart, J., dissenting). If habeas corpus proceedings can be disposed of so easily as moving the prisoner to a facility in another county, then the “great writ” has no teeth. “This court should not condone, much less become an active participant in, such a shell game.” *Id.* at 3 (citing *Noble v. State*, 2018 Ark. 2, at 3, 534 S.W.3d 717, 718 (Hart, J., dissenting)).

Anthony L. Reed, pro se appellant.

Leslie Rutledge, Att’y Gen., by: Adam Jackson, Ass’t Att’y Gen., for appellee.

In The Supreme Court of Arkansas

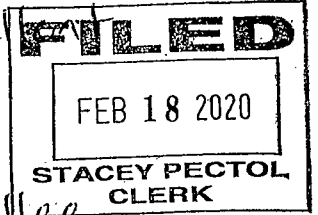
Anthony Reed

v.

CV-19-639

W. Straughn

Appel



Appellee

Petition For Rehearing

Comes now I, Anthony Reed pro-se, with this Petition For Rehearing to challenge the erroneous dismissal of my Appeal by this Honorable Court, on the grounds that I was transferred to another facility.

Ground 1. A.C.A. 16-112-105 does not state that a writ shall be dismissed on the basis of jurisdiction. It states that "(b) The writ shall be directed to the person in whose custody the prisoner is detained, and made returnable as soon as may be, before the Supreme Court Justices, or before the circuit judges of the county in which it may be served, if either are within the county."

W. Straughn, who was the Warden at ~~██████████~~ Cummins Unit at the time the writ was served. Now W. Straughn is the Asst. Director of the Arkansas Department

of Correction. His offices is now in Jefferson County,

the same County where I was detained at the Tucker  
Maximum Security Unit. Then out of know where I was  
transferred to a facility in Lincoln County. A decision  
that I have no power to control, but W. Straughn does  
have power to dictate any transfer he wants.

Ground 2. A.C.A. 16-112-106 Service of writ (c)  
"Anyone having in his or her custody or under his or her

power any person for whose relief a writ of habeas corpus  
shall have been issued or who is entitled to a writ of  
habeas corpus to inquire into the cause of his or her ~~detention~~

detention who shall transfer the person to the custody  
of another or place the person under the control or power  
of another, conceal the person, or change the place of the  
person's confinement with the intent to elude the service of  
the writ shall be guilty of a class A misdemeanor and shall  
pay the party injured five hundred dollars (\$500).

Ground 3. Associate Justice J. Hart stated in her dis-  
sent in Noble v. State, 2018 Ark. 2, at 3, 534 S.W.3d 717, 718

"However, when Mr. Noble perfected his appeal, jurisdiction

was established in this court. The Arkansas Supreme Court,

of course, has statewide jurisdiction. Moreover, article 7 sec-

tion 4, of the Arkansas Constitution gives this court full

power to issue writs of habeas corpus, as does the Arkansas

habeas statute, Arkansas Code Annotated § 16-112-102(a)(1)." **WHEREFORE** I, Anthony Reed hope and pray that

this Petition for Rehearing is granted for the reasons stated

above and the decision be reversed, I Anthony Reed be.

remanded back to Jefferson County to be discharged

Respectfully Submitted

~~Anthony Reed~~  
Anthony Reed # 0911914



State of Arkansas  
County of Lincoln

Subscribe and Sworn before me a Notary Public  
on this 12 day of February, 2020

PATRICIA ANN GOOLEY  
NOTARY PUBLIC-STATE OF ARKANSAS  
LINCOLN COUNTY  
My Commission Expires 01-31-2021  
Commission # 12382207

Patricia Ann Gooley  
Notary Public

1/31/21  
My Commission Expires

Certificate of Service

This is to certify that on this 12 day of Feb  
          , 2020, a copy of the foregoing Petition for Reh-  
earing was mailed to the Supreme Court of Arkansas,  
Office of the Clerk at Justice Building, 625 Marshall  
Street, Little Rock Ark. 72201

LL Office of Attorney General  
323 Center Street, Suite 200  
LITTLE ROCK, ARKANSAS 72201

ELECTRONICALLY FILED  
Arkansas Supreme Court  
Stacey Pectol, Clerk of the Courts  
2020-Feb-25 10:30:44  
CV-19-639  
3 Pages

**IN THE SUPREME COURT OF ARKANSAS**

**ANTHONY L. REED**

**APPELLANT**

**VS.**

**CASE NO. CV-19-639**

**WILLIAM STRAUGHN**

**APPELLEE**

**RESPONSE TO PRO SE PETITION FOR REHEARING**

Comes now Appellee, by and through counsel, Leslie Rutledge, Attorney General, and Adam Jackson, Assistant Attorney General, and for his Response, states:

A Jefferson County jury convicted Appellant of one count each of aggravated robbery, theft of property, and felon in possession of a firearm, and two counts of second-degree battery. *Reed v. State*, CACR 01-707 (Ark. Ct. App. Feb. 27, 2002). He was sentenced as a habitual offender to an aggregate term of 75 years' imprisonment. *Id.* On January 16, 2019, Appellant filed a state habeas petition in Jefferson County Circuit Court, the county in which he was incarcerated, arguing that he was being held unlawfully because the charging

information was signed by the deputy prosecuting attorney. On July 17, 2019, the circuit court dismissed his petition.

Appellant appealed the dismissal to this Court. After he submitted his brief-in-chief, he was transferred from a prison unit in Jefferson County to one in Lincoln County. Subsequently, on February 6, 2020, this Court dismissed his appeal for lack of jurisdiction. *Reed v. Straughn*, 2020 Ark. 52, at 2. This Court reasoned that “although [Appellant] was incarcerated in Jefferson County when he filed the habeas petition and proceeded with this pending appeal, a writ of habeas corpus issued by the Jefferson County Circuit Court could not be returned because he is no longer within its jurisdiction.” *Id.*

On February 18, 2020, Appellant filed a petition for rehearing in which he argues that this Court erred by dismissing his appeal. Specifically, he argues that because this Court’s jurisdiction is statewide, it had power to issue a writ of habeas corpus. *See* Petition, at 3 (citing *Noble v. State*, 2018 Ark. 2, at 3, 534 S.W.3d 717, 718 (Hart, J., dissenting)). The purpose of a petition for rehearing is to call attention to specific errors of law or fact which the opinion is thought to contain. Ark. S. Ct. R. 2-3(g) (2019). Rather than cite to controlling authority, Appellant has cited to a dissent to support his claim of error. The majority opinion in *Noble*, however, supports this Court’s conclusion that it lost jurisdiction when the petitioner was transferred out of the county in which he filed his state-habeas

petition. *Noble*, 2018 Ark. 2, at 1, 534 S.W.3d at 718. Thus, his petition for rehearing must be denied.

WHEREFORE, the State respectfully asks the Court to deny the Petition for Rehearing.

Respectfully submitted,

LESLIE RUTLEDGE  
Attorney General

BY: /s/Adam Jackson  
ADAM JACKSON  
Arkansas Bar No. 2013176  
Assistant Attorney General  
323 Center Street, Suite 200  
Little Rock, Arkansas 72201  
(501) 682-1785 [phone]  
(501) 682-2083 [fax]  
adam.jackson@arkansasag.gov

ATTORNEYS FOR APPELLEE

**CERTIFICATE OF SERVICE**

I, Adam Jackson, certify that on February 25, 2020, the foregoing document has been mailed, by United States Postal Service, postage prepaid, to:

Mr. Anthony L. Reed  
ADC#91194  
Varner Unit  
P.O. Box 600  
Grady, AR 71644

/s/ Adam Jackson  
ADAM JACKSON

3

(30)

**FORMAL ORDER**

STATE OF ARKANSAS, )  
 ) SCT.  
SUPREME COURT )

**BE IT REMEMBERED, THAT A SESSION OF THE SUPREME COURT  
BEGUN AND HELD IN THE CITY OF LITTLE ROCK, ON MARCH 19, 2020,  
AMONGST OTHERS WERE THE FOLLOWING PROCEEDINGS, TO-WIT:**

SUPREME COURT CASE NO. CV-19-639

ANTHONY REED

APPELLANT


V. APPEAL FROM JEFFERSON COUNTY CIRCUIT COURT – 35CV-19-37

W. STRAUGHN, WARDEN, ARKANSAS DEPARTMENT  
OF CORRECTION

APPELLEE

APPELLANT'S PRO SE PETITION FOR REHEARING IS DENIED. HART, J.,  
WOULD GRANT.

IN TESTIMONY, THAT THE ABOVE IS A TRUE COPY OF  
THE ORDER OF SAID SUPREME COURT, RENDERED IN  
THE CASE HEREIN STATED, I, STACEY PECTOL,  
CLERK OF SAID SUPREME COURT, HEREUNTO  
SET MY HAND AND AFFIX THE SEAL OF SAID  
SUPREME COURT, AT MY OFFICE IN THE CITY OF  
LITTLE ROCK, THIS 19TH DAY OF MARCH, 2020.

  
CLERK

BY: \_\_\_\_\_

DEPUTY CLERK

ORIGINAL TO CLERK

CC: ANTHONY REED  
ADAM JACKSON, ASSISTANT ATTORNEY GENERAL

In The United States District Court  
Eastern District of Arkansas  
Pine Bluff Division

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS  
APR 20 2020  
JAMES W. McCORMACK, CLERK  
By: *[Signature]* DEF. CLERK  
Petitioner

Anthony Reed

v. NO. 5:06CV00291 HDY

Larry Norris, Director of the  
Arkansas Department of Correction

Respondent

Motion For Relief From  
Judgment or Order

Rule 60. (b), (6)

(b) Grounds for relief from a final judgment, order, or proceeding. On motion and just terms the Court may relieve a party or its legal representative from final judgment, order, or proceeding for the following reasons:

(6) any other reason that justifies relief.

Ground (1)

Authority to file:

The Constitutional Provision Permitting Prosecution of offenses by information filed by the Prosecuting Attorney requires that information be filed in the name of the prosecuting attorney. And although a Deputy Prosecu-

ting Attorney is Generally clothed with all the powers and privileges ~~as~~ as the prosecuting attorney. He must file an information in the name of the Prosecuting Attorney and one filed in his own name is void. This means that the Deputy Prosecuting Attorney does not have the authority to file an information in his own name.

The Arkansas Constitution Amendment No 21 States:

Section 1. Prosecution by Indictment or Information - All offenses heretofore required to be prosecuted by Indictment may be prosecuted either by Indictment by a grand jury or Information filed by the Prosecuting Attorney.

My Felony Information filed under case no. CR-99-680-2 was signed and filed by the Deputy Prosecuting Attorney, in the name of the Deputy Prosecuting Attorney. Not in compliance with Amendment 21 of the Arkansas Constitution.

Under Amendment 21 of the Arkansas Constitution,  
the Deputy Prosecuting Attorney must, if he files an  
information, file it in the name of the Prosecuting  
Attorney and one filed in his own name is void.  
Johnson v. State, 199 Ark. 196 (1939).

Comes Now, I, Anthony Reed hope and pray  
that this Court find that fundamental unfairness  
occured that violated my Fifth and Fourteenth  
Amendment right to due process and that my  
confinment violates the Constitution, Laws, or  
treaties of the United States, ~~████~~ I hope and  
pray that this Honorable Court grant the Habeas  
Petition and release me from the Arkansas Depart-  
ment of Correction custody.

Respectfully Submitted  
Anthony Reed  
Anthony Reed #



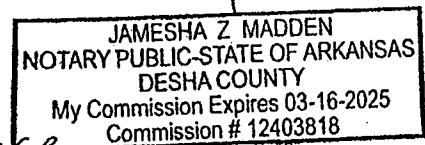
State of Arkansas

County of Desha

Subscribed and Sworn to before me a Notary Public on the 29<sup>th</sup> day of March, 2020.

3-16-2025  
My Commission Expires

Jamesha Z Madden  
Notary Public



Certificate of Service

This is to certify that on this 14<sup>th</sup> day of April, 2020, a copy of this Motion for Relief from Judgment or Order was mailed from the Varner Unit mail room to the U.S. District Court Eastern District of Arkansas, Pine Bluff Division.

Anthony Reed  
Anthony Reed

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

ANTHONY REED,  
ADC #91194

PETITIONER

v.

CASE NO. 5:06-CV-00291 BSM

LARRY NORRIS

RESPONDENT

ORDER

Anthony Reed's motion for relief from the judgment [Doc. No. 31] is denied because it is untimely. *See* Fed. R. Civ. P. 60(c). The judgment [Doc. No. 16] was entered on April 24, 2007, and the motion was not filed until April 20, 2020, nearly thirteen years later, and nearly ten years after the Eight Circuit denied leave to file a successive habeas petition [Doc. No. 30].

IT IS SO ORDERED this 11th day of May, 2020.

  
UNITED STATES DISTRICT JUDGE

U.S. DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
**Notice of Appeal to a Court of Appeals from a Judgment  
or Order of a District Court.**

2020 MAY 29 A 9:21

Pursuant to Rule 4 (F.R.A.P.)

MAY 29 2020

JAMES W. McCORMACK, CLERK  
By: LBic  
DLP CLERK

United States District Court for the PINE BLUFF Division  
District of ARKANSAS

Anthony REED #91194

PLAINTIFF

VS.

Case No. 5:06-LV-00291BSM

Larry NORTON

DEFENDANT

**NOTICE OF APPEAL**

Notice is hereby given that Anthony REED #91194, in the above  
named case, hereby appeals to the United States Court of Appeals for the  
8th Circuit (from the final judgment or Order entered in this action on  
the 11th day of MAY, 20 20).

Anthony REED  
Petitioner, Pro-Se  
ADC# 91194  
VARICE Unit  
Arkansas Dept. of Correction  
P.O. BOX 600, County  
Greasy AR, 71644

"CERTIFICATE OF SERVICE"

I, Anthony Reed, do hereby state and certify that a copy of the foregoing:  
Notice of Appeal, was placed in the Varner Unit Inmate Mailbox and  
sent postage pre-paid by the United States Postal Services to:

UNITED STATES DISTRICT COURT  
1000 W. CAPITOL AVENUE SUITE 1A-149  
LITTLE ROCK, ARKANSAS 72201

This 26 Day of May, 2020.

Anthony Reed  
PLAINTIFF,

Pro Se

MAY 29 2020

AFFIDAVIT OR DECLARATION  
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

JAMES W. McCORMACK, CLERK

By: [Signature] DEP CLERK

I, ANTHONY REED, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefore; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months	
Amount expected next month	You	Spouse
Spouse Employment	\$ <u>///</u>	\$ <u>///</u>
Self-employment	\$ <u>///</u>	\$ <u>///</u>
Income from real property (such as rental income)	\$ <u>///</u>	\$ <u>///</u>
Interest and dividends	\$ <u>///</u>	\$ <u>///</u>
Gifts	\$ <u>///</u>	\$ <u>///</u>
Alimony	\$ <u>///</u>	\$ <u>///</u>
Child Support	\$ <u>///</u>	\$ <u>///</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>///</u>	\$ <u>///</u>
Disability (such as social security, insurance payments)	\$ <u>///</u>	\$ <u>///</u>
Unemployment payments	\$ <u>///</u>	\$ <u>///</u>
Public-assistance (such as welfare)	\$ <u>///</u>	\$ <u>///</u>
Other (specify):	\$ <u>///</u>	\$ <u>///</u>
Total monthly income:	\$ <u>///</u>	\$ <u>///</u>

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer N/A  
 Address N/A  
 Dates of Employment N/A  
 Gross monthly pay \$ N/A

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer N/A  
 Address N/A  
 Dates of Employment N/A  
 Gross monthly pay \$ N/A

4. How much cash do you and your spouse have? \$ 0.00

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Employer N/A  
Address N/A  
Dates of Employment N/A  
Gross monthly pay \$ N/A

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home  
Value /

Other real estate  
Value /

Motor Vehicle #1  
Year, make & model /  
Value /

Motor Vehicle #2  
Year, make & model /  
Value /

Other assets  
Description /  
Value /

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money N/A  
Amount owed to you N/A  
Amount owed to your spouse \$ N/A

7. State the persons who rely on you or your spouse for support.

Name N/A

Relationship N/A

Age N/A

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>      /      </u>	\$ <u>      /      </u>
Are real estate taxes included? Yes No		
Is property insurance included? Yes No		
Utilities (electricity, heating fuel, Water, sewer, and telephone)	\$ <u>      /      </u>	\$ <u>      /      </u>
Home maintenance (repairs or upkeep)	\$ <u>      /      </u>	\$ <u>      /      </u>
Food	\$ <u>      /      </u>	\$ <u>      /      </u>
Clothing	\$ <u>      /      </u>	\$ <u>      /      </u>
Laundry and dry-cleaning	\$ <u>      /      </u>	\$ <u>      /      </u>
Medical and dental expenses	\$ <u>      /      </u>	\$ <u>      /      </u>
Transportation (not including motor vehicle payments)	\$ <u>      /      </u>	\$ <u>      /      </u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>      /      </u>	\$ <u>      /      </u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>      /      </u>	\$ <u>      /      </u>
Life	\$ <u>      /      </u>	\$ <u>      /      </u>
Health	\$ <u>      /      </u>	\$ <u>      /      </u>

Motor Vehicle \$       /       \$       /      

Other:                                  \$                          \$                         

Taxes (not deducted from wages or included in mortgage payments)

(specify):                                  \$       /       \$       /      

Installment payments

Motor Vehicle \$       /       \$       /      

Credit card(s) \$       /       \$       /      

Department store(s) \$       /       \$       /      

Other:                                  \$       /       \$       /      

Alimony, maintenance, and support paid to others \$       /       \$       /      

Regular expenses for operation of business, profession,  
or farm (attach detailed statement) \$       /       \$       /      

Other (specify):                                  \$       /       \$       /      

Total monthly expenses: \$       /       \$       /      

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes (No) If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? Yes (No)



If yes, how much? 1

If yes, state the attorney's name, address, and telephone number:

N/A

11. Have you paid – or will you be paying – anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☒ Yes ☐ No

If yes, how much? DONT KNOW

If yes, state the person's name, address, and telephone number: MAIL ROOM / A.D.E  
VALENT, P.O. Box 600, GRANT, ARK 71444

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I've been gone 21 yrs. And my family that use to help me has passed.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge.

Executed on: MAY 26, 20 20

Anthony Reed  
(Signature)

**CERTIFICATE**

(Prisoner Accounts Only)

(To be Completed by the Institution of Incarceration)

Anthony Reed #091194

I certify that the applicant named herein has the sum of \$ 6 on account to his/her credit at the Varner Unit institution where he is confined.

I further certify that the applicant likewise has the following securities to his/her credit according to the records of said institution: none to my knowledge

I further certify that during the past six months the applicant's average balance was

\$ 17.05

5/21/2020

Date

Ruth Calloway  
Signature of Authorized Officer of Institution

CALCULATION OF INITIAL PAYMENT OF FILING FEE

(To be Completed by the Institution of Incarceration)

PLAINTIFF: Anthony R. Reed

ADC NUMBER: 091194

FEDERAL COURT CASE NUMBER (IF KNOWN): \_\_\_\_\_

Total deposits for las six (6) months: \$ 116.00

Average monthly deposit (total deposits divided by 6) \$ 19.33

Total balances for last six (6) months: \$ 102.29

Average monthly balance:  
(Total balances divided by 6) \$ 17.05

Current account balance \$ 0

Initial payment of filing fee as of 5/21/2020 \$ 3.87

(The greater of the average monthly deposit  
Or the average monthly balance x .20)

DATE: 5/21/2020

AUTHORIZED OFFICIAL

Ruth Calloway

(NO FILING FEE SHALL BE IN EXCESS OF  
\$350.00 FOR A CIVIL LAWSUIT  
OR  
\$455 FOR AN APPEAL)

U. S. COURT OF APPEALS - EIGHTH CIRCUIT  
NOA SUPPLEMENTIN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS

Please note any additions or deletions to the style of the case from the style listed on the docket sheet (or attach an amended docket sheet with the final style of case)

Date 05/03/2020

**Caption:** Reed v. Norris

**Case No.:** 5:06-cv-00291-BSM

**Appellant:** Anthony Reed

**Appellant's Attorney(s):** PRO SE

**Appellees:** Larry Norris

**Appellee's Attorney(s):** Brent P. Gasper and Adam Donner Jackson

**Court Reporter(s):** N/A

**Name of Person who prepared appeal:** Abby Temple, 501-604-5351

Length of Trial (# of days)	Fee Paid? Y/N:	IFP Granted? Y/N	Pending IFP Motion Pending? Y/N
<u>N/A</u>	<u>N</u>	<u>N</u>	<u>N</u>

Counsel Retained/Appointed/Pro Se	Pending Motions? Y/N
<u>PRO SE</u>	<u>N</u>

**CRIMINAL CASES ONLY:**

**Is defendant incarcerated?** \_\_\_\_\_

**Where?** \_\_\_\_\_  
**Address of Defendant:** \_\_\_\_\_

**Please list all other defendants in this case if there were multiple defendants:**

\_\_\_\_\_

**Special Comments:** \_\_\_\_\_

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

No: 20-2111

Anthony Reed

Appellant

v.

Dexter Payne, Director, Arkansas Department of Correction

Appellee

---

Appeal from U.S. District Court for the Eastern District of Arkansas - Pine Bluff  
(5:06-cv-00291-BSM)

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**ORDER**

If the original file of the United States District Court is available for review in electronic format, the court will rely on the electronic version of the record in its review. The appendices required by Eighth Circuit Rule 30A shall not be required. In accordance with Eighth Circuit Local Rule 30A(a)(2), the Clerk of the United States District Court is requested to forward to this Court forthwith any portions of the original record which are not available in an electronic format through PACER, including any documents maintained in paper format or filed under seal, exhibits, CDs, videos, administrative records and state court files. These documents should be submitted within 10 days.

June 04, 2020

Order Entered Under Rule 27A(a):  
Clerk, U.S. Court of Appeals, Eighth Circuit.

---

/s/ Michael E. Gans

(47)

**Eighth Circuit Court of Appeals**

**PRO SE Notice of Docket Activity**

The following was filed on 06/16/2020

**Case Name:** Anthony Reed v. Dexter Payne

**Case Number:** 20-2111

**Docket Text:**

MOTION for leave to proceed on appeal in forma pauperis w/attached affidavit, filed by Party Mr. Anthony Reed w/service 06/16/2020. [4924296] [20-2111]

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

Document Description: Motion and Affidavit for Permission to Appeal In Forma Pauperis

Document Description: Envelope

**Notice will be mailed to:**

Mr. Anthony Reed  
VARNER CORRECTIONAL FACILITY  
91194  
P.O. Box 600  
Grady, AR 71644-0600

**Notice will be electronically mailed to:**

Mr. Adam Donner Jackson: adam.jackson@arkansasag.gov,  
christeen.payne@arkansasag.gov, laura.beatty@arkansasag.gov, christa.warner@arkansasag.gov