

APPENDIX

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

No: 22-2834

Henry A. Harmon

Appellant

v.

Kayla Noel-Emsweller, Records Supervisor, ADC, et al.

Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Central
(4:22-cv-00629-BRW)

ORDER

The \$505 appellate filing and docketing fee has not been paid and is due. Appellant is directed to either pay the fee in the district court or file a motion for leave to proceed in forma pauperis in this court within 28 days of the date of this order. A motion for leave to proceed in forma pauperis must include a completed copy of the attached "Application to Proceed Without Prepaying Fees or Costs" or an affidavit that shows in the same detail the Appellant's inability to pay or to give security for fees and costs. If appellant does not pay the fee or move for IFP status by 09/27/2022, this appeal may be dismissed for failure to prosecute without further notice.

August 30, 2022

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

/s/ Michael E. Gans

A-1-2.

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

**HARRY A. HARMON
ADC #103609**

PLAINTIFF

V.

NO. 4:22-cv-00629-BRW-ERE

KAYLA NOEL-EMSWELLER, *et al.*

DEFENDANTS

JUDGMENT

Consistent with the Order that was entered on this day, it is CONSIDERED, ORDERED, and ADJUDGED that this case is hereby DISMISSED, WITHOUT PREJUDICE.

IT IS SO ORDERED this 8th day of August, 2022.

BILLY ROY WILSON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

HARRY A. HARMON
ADC #103609

PLAINTIFF

V.

NO. 4:22-cv-00629-BRW-ERE

KAYLA NOEL-EMSWELLER, *et al.*

DEFENDANTS

ORDER

The Court has received a Recommendation from Magistrate Judge Edie R. Ervin. After careful review of the Recommendation, Mr. Harmon's timely objections, as well as a de novo review of the record, the Court concludes that the Recommendation should be, and hereby is, approved and adopted as this Court's findings in all respects.

Mr. Harmon's complaint is DISMISSED, without prejudice, based on his failure to state a plausible constitutional claim for relief. The Court certifies that this dismissal constitutes a "strike" under 28 U.S.C. § 1915(g) and an *in forma pauperis* appeal would not be taken in good faith.

The Clerk is directed to close this case.

IT IS SO ORDERED this 8th day of August, 2022.

BILLY ROY WILSON
UNITED STATES DISTRICT JUDGE

A-3.

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

**HARRY A. HARMON
ADC #103609**

PLAINTIFF

V. NO. 4:22-cv-00629-BRW-ERE

KAYLA NOEL-EMSWELLER, et al.

DEFENDANTS

RECOMMENDED DISPOSITION

I. Procedures for Filing Objections:

This Recommendation for dismissal has been sent to United States District Judge Billy Roy Wilson. You may file written objections to all or part of this Recommendation. Any objections filed must: ^{*}(1) specifically explain the factual and/or legal basis for your objection; and (2) be received by the Clerk of this Court within fourteen (14) days of the date of this Recommendation. If you do not file objections, Judge Wilson may adopt this Recommendation without independently reviewing all of the evidence in the record. By not objecting, you may waive the right to appeal questions of fact.

II. Discussion:

^{*} Plaintiff Harry A. Harmon, an Arkansas Division of Correction (“ADC”) inmate, filed this lawsuit *pro se* under 42 U.S.C. § 1983. *Doc. 2.* Mr. Harmon’s complaint alleges that his sentence computation for his state-court criminal convictions is incorrect. He explains that he should have been sentenced to 240 ^{show proof}

A-3.

months of incarceration, rather than 420. *Id.* at 5. He claims that ADC Records

Supervisor Kayla Noel-Emsweller, Assistant Attorney General Adam Jackson, ADC

Director Dexter Payne, and ADC Secretary Solomon Graves have refused to correct

this error in violation of his due process rights (*Id.* at 8).¹ For relief, Mr. Hampton

requests compensatory and punitive damages.

insufficient error of name state *Argue and what page fits on p. #2 a argue of such can not be accepted for error.*

The Court has reviewed Mr. Hampton's complaint as required by the Prison

Litigation Reform Act. 28 U.S.C. § 1915A(a).² For the reasons stated below, Mr.

Hampton's claims should be dismissed based on his failure to state a plausible claim

for relief.

must show documents were a judgement in your favor is valid of a illegal sentence.
If a judgment in favor of a prisoner in a 42 U.S.C. § 1983 action would

necessarily imply the invalidity of the state conviction, *continued imprisonment*, or

show document proof of dates for all

¹ In addition, Mr. Harmon alleges that Arkansas Supreme Court Clerk Stacey Pectal denied him access to the Court when she refused to file his untimely rebuttal response reply to Assistant Attorney General Jackson's response to his petition for mandamus. Doc. 2. at 9. (However, Mr. Harmon fails to name Stacey Pectal as a Defendant.) Furthermore, an allegation that an individual impeded access to the courts, standing alone, does not amount to a constitutional violation. Instead, to allege a plausible denial of court access claim in this context, a plaintiff prisoner must allege facts to show that a defendant kept the prisoner from litigating a claim and, by this misconduct, caused the prisoner to suffer an actual injury. *White v. Kautzky*, 494 F.3d 677, 680 (8th Cir.2007). To show an actual injury, the prisoner must show that a non-frivolous legal claim was "frustrated or . . . impeded." *Id.* Mr. Harmon's complaint fails to allege that he suffered any actual injury to support this constitutional claim.

² The Prison Litigation Reform Act requires federal courts to screen prisoner complaints, and to dismiss any claims that: (a) are legally frivolous or malicious; (b) fail to state a claim upon which relief may be granted; or (c) seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(a) & (b). When making this determination, a court must accept the truth of the factual allegations contained in the complaint, and it may consider documents attached to the complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Reynolds v. Dormire*, 636 F.3d 976, 979 (8th Cir. 2011).

sentence, then no claim lies unless the conviction or sentence is reversed, expunged, or ^{still pending ↓} ~~called~~ ^{must talk about} into question by the issuance of a federal writ of habeas corpus. *Heck v. Humphrey*, 512 U.S. 477, 486-78 (1994) (emphasis added). See also *Sheldon v. Hundley*, 83 F.3d 231, 233 (8th Cir. 1996) (under *Heck*, courts look to the essence of plaintiff's claims and not merely the form of relief sought). A claim based on the invalidity of the state conviction, continued imprisonment, or sentence "that has not been so invalidated is not cognizable under § 1983." *Heck*, 512 U.S. at 487. "[W]hen a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or speedier release from imprisonment, his sole federal remedy is a writ of habeas corpus." *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973).

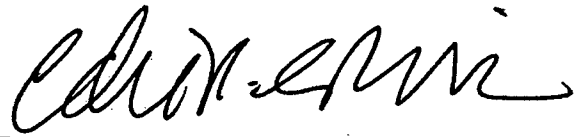
Mr. Harmon's complaint seeks monetary damages for the alleged violation of his due process rights. However, if the Court were to determine that Mr. Harmon's sentence computation is incorrect, that decision would necessarily imply the invalidity of Mr. Harmon's continued incarceration. Notably, Mr. Harmon fails to allege that his current criminal sentence has been reversed, expunged, or called into

question by a federal writ of habeas corpus.³ Thus, Mr. Harmon's claims are *Heck* barred.⁴

IT IS THEREFORE RECOMMENDED THAT:

- * 1. Mr. Hamon's complaint be DISMISSED, without prejudice, based on his failure to state a plausible constitutional claim for relief under 42 U.S.C. § 1983.
- * 2. The Court certify that this dismissal constitutes a "strike" for purposes of 28 U.S.C. § 1915(g) and that an *in forma pauperis* of this dismissal would be frivolous and not taken in good faith.
3. The Clerk be instructed to close this case.

Dated this 20th day of July, 2022.



UNITED STATES MAGISTRATE JUDGE

³ The Arkansas Court of Appeals previously upheld Mr. Harmon's criminal sentence. *Harmon v. State*, 2019 Ark. 292, 588 S.W.3d 432 (Oct. 30, 2019). Furthermore, the Arkansas Supreme Court specifically rejected Mr. Harmon's argument that his sentences should have been run concurrently, rather than consecutively, and the alleged improper denial of 1,888 days of jail credit. *Harmon v. Noel-Emsweller*, 2022 Ark. 26, 2022 WL 404112 (Feb. 10, 2022).

⁴ The Court considered converting this action to a habeas corpus action under 28 U.S.C. § 2254. However, at this time Mr. Hampton already has a § 2254 habeas action pending in this Court, *Harmon v. Arkansas Dep't of Corr.*, E.D. Ark. Case No. 4:20cv697-KGB. Thus, there is no need to consider further whether the action should be converted.

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

NO: 22-2834

HENRY A. HARMON

APPELLANT

VS.

**KAYLA NOEL-EMSWELLER,
RECORDS SUPERVISOR, ADC, et. al.**

APPELLES

Notice of Appeal, for judgment made on October 24, 2022, pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), and the formal mandate was issued on November 14, 2022.

Comes now plaintiff, Henry A. Harmon, in the above styled motion, appealing decision made on the 14tenth day of November 2022, the formal mandate issued to support during plaintiff's relief petitioned for, pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), mandating that plaintiffs' petition has failed to state a claim that was plausible.

A. Plaintiff has met his burden of factual proof, to support his claim under section 1983, pursuant to U.S.C. section 1983 plaintiff not only alleged, Harmon provided substantial proof by legal documentations, affidavits and case law to show that, (1.) the defendants did deprive hin of a Federal Constitutional right and (2.) defendants did in fact act under the color of the state law. See. Savory v Lyons, 469 F.3d 667, 670 (7th Cir. 2006).

B. Pursuant to 28 U.S.C. 1915 (A), section 1983, the court must review the true merits of a prisoner/plaintiff Harmon's complaint and dismiss it if the action ~~is~~ frivolous or malicious, fails to state a claim upon which relief may be granted, and or seeks monetary relief against the defendants, as plaintiff has met this burden as well.

1. Plaintiff has provided the court's with ADC's documents for proof at which the courts have failed to investigate and review the true merits.

A-4.

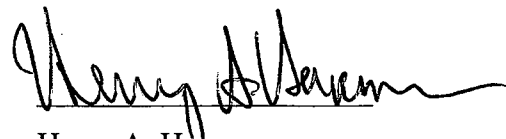
2. Plaintiff has shown factual proof to his 8th, 14th Amendments' rights have been violated also;

3. Plaintiff provided legal case law, specifically the Bosnick Rule, at which it stipulated the production of legal documents by these defendants to contradict that Harmon's rights have not been violated, with acts, laws, and statutes for actual proof that plaintiff's sentence is in fact correct, removing all doubt that these state officials haven't committed errors besides to when an audit was done by C. Rushing ADC employee had performed on or about 9/01/2020, readjusting the 1888 days served towards the underlying offense. See. Bosnick v. Lockhart, 283 Ark. 206, 672 S.W. 2d 52 (1984).

C. Plaintiff concludes, to move to appeal the Eight Circuit Court of Appeals decision to the United States Supreme Court for further review, of all the facts presented within its lower courts. Plaintiffs' individual grounds was not investigated and ruled according to law on each individual ground to warrant a dismissal of his meritorious claims that was presented with factual evidence to warrant all relief argued for.

Plaintiff also moves that this Notice of Appeal be accepted as read and be granted for plaintiff to appeal this decision within this Court, for the United States Supreme Court to hear all petitioners' factual claims that was presented.

Sincerely Submitted,

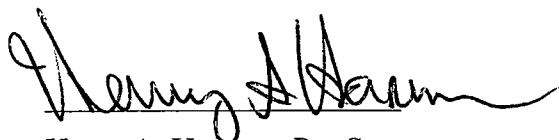


Henry A. Harmon

CONCLUSION

Plaintiff moves to conclude that any and all petitions filed within this case No: 22-2834, be lodged within the United States Supreme for appellant purposes, specifically exhibits, original petitions on record, and any other official documents deemed necessary as pertaining to this appeal as such.

Respectfully Submitted,



Henry A. Harmon, Pro Se

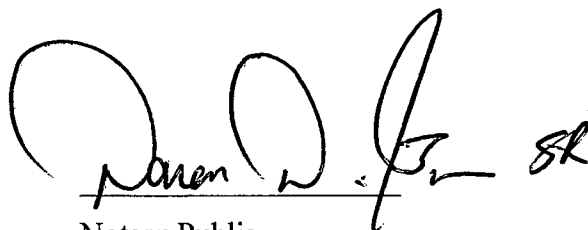
NOTARY

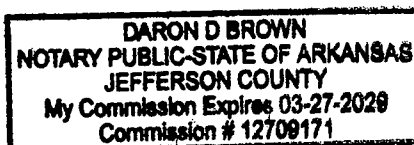
STATE OF ARKANSAS)
) §§
COUNTY OF JEFFERSON)

Subscribed and sworn to before me, a Notary Public, on this 14th day of December 2022.

3/27/2029

My Commission Expires:


Notary Public



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

NO: 22-2834

HENRY A. HARMON

APPELLANT

V.

KAYLA NOEL-EMSWELLER, et. al., ADC

APPELLEES

Designation of record, for appellants Appeal for Judgment made on October 24th, of 2022, of supporting mandate issued on November 14, 2022, to deny his petition as such.

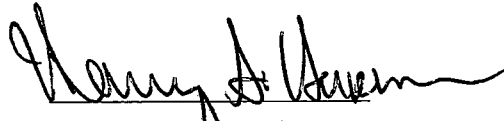
Comes now, plaintiff/Appellant, Henry A. Harmon, pro se in the above styled motion, to designate the entire record within the above case number, in support of his Notice of Appeal within court for appellant purposes, states as follows;

1. The plaintiff designates the entire record, all proceedings, exhibits presented as evidence and documents introduced into evidence or offered into evidence, that has been contained for appeal purposes.
2. Notice is hereby given that appellant/ Harmon has in fact appealed the United States Court of Appeals for the Eight Circuit decisions by Shepherd, Kelly, and Grasz, Circuit Judges approve and agree with the United States District Judge Billy Ray Wilson and Magistrate Judge, Ervin's recommendation to dismiss, for plaintiff's alleged failure to state a plausible constitutional claim.
3. A copy of this motion for Designation of Record has in fact been delivered to the United States Court of Appeals for the Eight Circuit, Thomas F. Bagleton U.S. Courthouse 111 South 10th Street, Room 24. 329, St. Louis, Missouri, 63102, clerk/ Michael E. Gans.

Also for clerk/Michael E. Gans to have court to transcribe all proceedings in above case number, for further legal proceedings as such.

4. Plaintiff/Appellant Harmon has in fact been found indigent within previously filed Forma Pauperis petitions in order to proceed to the United States Supreme Court, without pre-paying filing fees for court cost as such.

Respectfully Submitted,



Henry A. Harmon

NOTARY

STATE OF ARKANSAS)

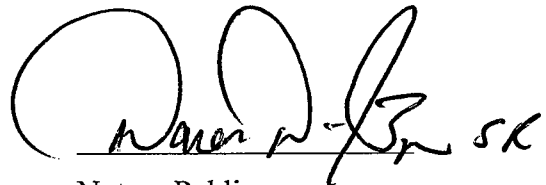
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COUNTY OF JEFFERSON)

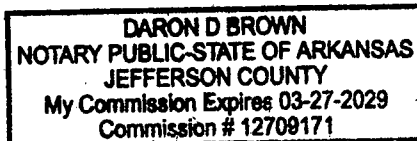
Subscribed and sworn to before me, a Notary Public, on this 11th day of December, 2022.

3/27/2029

My Commission Expires:



Notary Public



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

No: 22-2834

Henry A. Harmon

Plaintiff - Appellant

v.

Kayla Noel-Emsweller, Records Supervisor, ADC; Dexter Payne, Director, ADC; Solomon Graves, Secretary, ADC; Leslie Carol Rutledge, Attorney General, State of Arkansas; Adam Donner Jackson, Assistant Attorney General, State of Arkansas

Defendants - Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Central
(4:22-cv-00629-BRW)

JUDGMENT

Before SHEPHERD, KELLY and GRASZ, Circuit Judges.

The court has reviewed the original file of the United States District Court. Appellant's application to proceed in forma pauperis is granted. The full \$505 appellate filing and docketing fees are assessed against the appellant. Appellant may pay the filing fee in installments in accordance with 28 U.S.C. § 1915(b). The court remands the assessment and collection of those fees to the district court.

It is ordered by the court that the judgment of the district court is summarily affirmed.
See Eighth Circuit Rule 47A(a).

The motion for appointment of counsel is denied as moot.

October 24, 2022

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

/s/ Michael E. Gans

A-S

UNITED STATES COURT OF APPEALS
FOR THE EIGHT CIRCUIT

NO: 22-2834

HENRY A. HARMON

PLAINTIFF-APPELLANT

VS.

KAYLA NOEL- EMSWELLER, ETAL.

DEFENDANTS- APPELLEES

REHEARING EN BANC

Comes now the above plaintiff-appellant, Henry A. Harmon, in the above styled motion, demanding a rehearing en banc by all the active judges of the court rather than by the usual three-judge panel, per Rule 40 (a), Fed. R. App. P.

Plaintiff's appeal from the U.S. District Court for the Eastern District of Arkansas-Central (4:22-CV-00629-BRW), was affirmed on October 24, of 2022, by this Eight Circuit of the U.S. Court of Appeals, at which the true particulars were not addressed, to warrant a decision to affirm the district court summarily.

Plaintiff states with particularity, the points of law and facts that the court over-looked and misapprehended; states as follows,

1. The court has failed to acknowledge the Bosnick Rule, see Bosnick v. Lockhart, 283 Ark 206, 672 S.W. 2d 52 (1984), in failing to produce factual documentation to support their allegations that plaintiff was in fact sentenced under the correct acts, statutes, and accredited time served of 1,888 days, was in fact credited towards his complete sentence. This documentation was not presented to the court by said Assistant Attorney General Adam Jackson.

- 1.1. Sentence order was also illegal, at which the state failed to show by facts that plaintiff was not sentenced illegally by sentencing Harmon to Community Corrections Center (CCC), Presumptive Sentence of 108 months, at one

A-6.

Alternative Sanction for 5-10-104 (a)(3)- manslaughter and 60 months also in ADC.

- 1.2. It is illegal to sentence plaintiff under A.C.A. section, 16-93-1202 (10)(A)(i)(6), making Harmon ineligible to be sentenced in the Department of Community Corrections Center- (CCC). See. documents pgs. 47-52 of 131 filed 07/08/2022 factual proof that Harmon was illegally sentenced and did not meet the requirements to be sentenced as such. The state has failed to put forth legal documents or documentations to support that plaintiff has failed to state a claim that is plausible, at which this is plausible, due to the fact that if Harmon is not eligible and has produced the legal documentations per the Westlaw section 16-93-1202, true definitions effective; July 28, of 2021 from the enacted law, would in fact raise an eyebrow if only the court will review the evidence that supports plaintiff's legal arguments, it would be no dispute that plaintiff has failed to state a claim, the true record speaks for itself.
- 1.3. Plaintiff reaffirms that this is alive and controversy case, that these violations will continue to reoccur, if this honorable court fails to truly review the complete facts, presented by plaintiff and investigate with true decorum to render true justice.
1. Plaintiff was in fact made to serve over eighty-five percent on count-1-manslaughter, flattening this sentence, then start serving count-2-robbery, at which plaintiff's plea agreement, specifically stated both to be stacked and run together, not seperately as the ADC has done. Both of these counts where in fact from the same incident case no: 2021-0515 and same victim, at which these two charges have been separated as two separate incidents, making plaintiff serve two separate sentences is in fact illegal to do so.
2. Plaintiff was only required to serve 1/3 of Count-1-manslaughter charge towards transfer eligibility date at ten months, not the whole sentence as ADC has done. Plaintiff was only to serve 1/2 of 1/2 of Count-2- robbery, that was required to serve before transfer eligibility, at which that would have been ten years on this robbery charge. Plaintiff would have to serve ten years and ten months on both Count-1 and Count-2 ran together as the original plea agreement stipulated. This plea agreement has been breached and the contract is in fact void.

3. Plaintiff plead within a plea agreement to lesser charges, at which good time credit, should have been accredited to the Count 1 and Count-2 for the 1,888 days served already within prison, at which the prison administration has failed to credit plaintiff all good time credit and calculate his sentence accordingly to reflect class C felony of manslaughter and a class B felony of robbery, at which these charges warrant plaintiff must receive good time credit especially if his class status has never changed to warrant him not to receive the accumulated good time credit for the 1,888 days served, day for day, within the (ADC),- Arkansas Department of Corrections, at which they have failed to credit plaintiff his good time that is prescribed by enacted laws at the time plaintiff received those charges. See. Edward v Balisok, 520 U.S. 641, 643-647 (1997).

3.1. Accordingly, in Edward v, Balisok, 520 U.S. 641 (1997), Heck was applied within this circumstances of this section 1983 action claiming damages and equitable relief for a procedural defect in a prison's administrative process, where the administrative action taken against the plaintiff could and did affect credits towards released based on good time served, 1,888 days served day for day that should have received good time credit towards complete sentence for actually serving these days as such. Requests for relief turning on circumstances of confinement may in fact be presented in a section 1983 action.

3.2. Some cases are hybrids, with a plaintiff/prisoner seeking relief unavailable in habeas, notably damages, but on allegations that not only support a claim for recompense, but imply the invalidity either of an underlying conviction and/or of a particular ground for denying release short of serving the maximum term of confinement. See. Heck v Humphery, 512 U.S. 477 (1994), it is held that where success in a prisoner's section 1983 damages action would implicitly question the validity of conviction and/or duration of sentence.

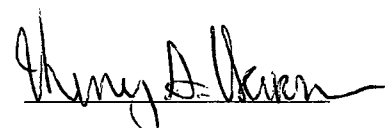
3.3. Plaintiff established that his constitutional rights where in fact violated, specifically guilt was admitted by (ADC's) Central Office records personnel, C. Rushing, who performed an audit of time calculations for plaintiff's time removing time served on underlying offense of Robbery of 1,888 days served to offense 1-manslaughter, still making Harmon serve over eighty-five percent, separating these charges, makes it still an illegal sentence, that is still not correct

to this day. See documents #5-0 filed 08/03/2022 pgs. 14 of 114 supporting factual proof to warrant rehearing. See also documents #5-0 filed 08/03/2022 Affidavits pgs. 19-23 with complete sworn details to these legal matters that have gone unnoticed. See. Muhammad v Close 540 U.S. 749 (2004).

3.4. Plaintiff has in fact put forth plausible constitutional claim for relief, with supporting law and exhibits of the exact constitutional laws violated by said defendants.

1. Defendants violated plaintiff's Fourteenth Amendment right to equal treatment and equal protection due to his illegal sentence structure, violating the plea agreement contract, failing to produce legal documentations of correct acts and statutes that plaintiff was sentenced under, at which the courts have failed to request this documentation for an open transparency to ensure plaintiff's constitutional rights are not in fact being violated as such. Plaintiff has a constitutional right to be treated as all other persons within a penal situation also.
2. Plaintiff has put forth his factual evidence to support his claim that he has suffered irreparable damages, mentally, emotionally and psychologically, due to the defendants refusing to acknowledge that plaintiff, a prisoner, is in fact correct and they are wrong. Defendants, again, have failed to present evidence from their (ADC) database, to confirm that plaintiff's claim is in fact frivolous, at which they do not have any evidence to rebut plaintiffs' meritorious claims, at which the Bosnick Rule, stipulate the productions of written proof according to state law, the exact sentence structure, what Statutes and Acts applied to plaintiff's sentence and how was he to serve the complete sentence as such, at which the record clearly shows that defendants have to produce evidence and explain their documentations within their records as required by law, See. Again. Bosnick v Lockhart, 283 Ark. 206, 672 S.W. 2d. 52 (1984).

Respectfully Submitted,

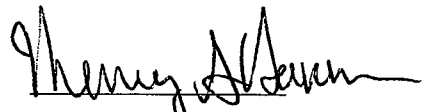
A handwritten signature in black ink, appearing to read "Henry A. Harmon", with a long horizontal flourish extending to the right.

Henry A. Harmon, Pro Se

CONCLUSION

Plaintiff concludes that a complete En Banc re-hearing is warranted due to the constitutional rights that were violated by said defendants, at which plaintiff has provided the courts with factual evidence, to support his claim for a full denovo review again in this legal matter to proceed forward with civil claim, that has meritorious claims that needs this court to fully address accordingly. See. Johnson v. Zema Sys. Corp. 170 F.3d 734, 741 (7th Cir. 1999).

Sincerely Submitted,

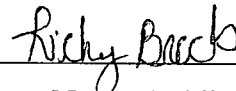


Henry A. Harmon, Pro Se

STATE OF ARKANSAS)

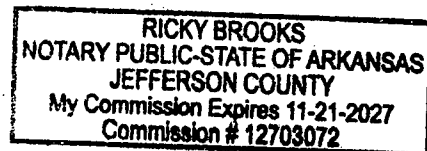
COUNTY OF Jefferson) §

SUBSCRIBED AND SWORN TO ME, a Notary Public, on this 7th day of November, 2022.



Notary Public

My Commission Expires: 11/21/27



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

No: 22-2834

Henry A. Harmon

Appellant

v.

Kayla Noel-Emsweller, Records Supervisor, ADC, et al.

Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Central
(4:22-cv-00629-BRW)

MANDATE

In accordance with the judgment of October 24, 2022, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

November 14, 2022

Clerk, U.S. Court of Appeals, Eighth Circuit

A-6.

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

No: 22-2834

Henry A. Harmon

Appellant

v.

Kayla Noel-Emsweller, Records Supervisor, ADC, et al.

Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Central
(4:22-cv-00629-BRW)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

December 13, 2022

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

/s/ Michael E. Gans

A-7.

Doris Alexander (ADC)

From: Kayla Noel-Emsweller
Sent: Friday, February 15, 2019 12:54 PM
To: Doris Alexander (ADC)
Subject: RE: Alexander, Henry Harmon # 103609

That is incorrect the sentencing order states offense #1 dkt#2012-515 is concurrent to dkt# 1999-1301 because he was a parole violator with new time because of the resentenced offense #2 dkt# 2012-515 and is to run consecutive to offense# 1 giving him a total of 540 months, but I said all of that to explain it to (you) because inmates time computation cannot be grieved.

Kayla Noel-Emsweller
Records Supervisor
Centralized Records
2403 East Harding
Pine Bluff, AR 71601
Kayla.Noel-Emsweller@arkansas.gov
Phone: (870)267-6681
Fax: (870) 267-6607

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From: Doris Alexander (ADC) <Doris.M.Alexander@arkansas.gov>
Sent: Friday, February 15, 2019 12:38 PM
To: Kayla Noel-Emsweller <Kayla.Noel-Emsweller@arkansas.gov>
Subject: RE: Alexander, Henry Harmon # 103609

See Attached..

*Doris M. Alexander, Inmate Records Supervisor
Maximum Security Unit
2501 State Farm Rd.
Tucker, AR 72168
501-842-3800 - Max Unit
501-842-8505 - Office
501-842-1977 - Fax*

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From: Kayla Noel-Emsweller
Sent: Friday, February 15, 2019 12:13 PM

A-8
1

To: Doris Alexander (ADC) <Doris.M.Alexander@arkansas.gov>

Subject: RE: Alexander, Henry Harmon # 103609

What is he saying that is wrong?

Kayla Noel-Emsweller

Records Supervisor

Centralized Records

2403 East Harding

Pine Bluff, AR 71601

Kayla.Noel-Emsweller@arkansas.gov

Phone: (870)267-6681

Fax: (870) 267-6607

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From: Doris Alexander (ADC) <Doris.M.Alexander@arkansas.gov>

Sent: Friday, February 15, 2019 11:12 AM

To: Kayla Noel-Emsweller <Kayla.Noel-Emsweller@arkansas.gov>

Subject: Alexander, Henry Harmon # 103609

Could you please check his J&C 2012-0515. He has written a grievance against me ☹

Doris M. Alexander, Inmate Records Supervisor

Maximum Security Unit

2501 State Farm Rd.

Tucker, AR 72168

501-842-3800 - Max Unit

501-842-8505 - Office

501-842-1977 - Fax

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STATE OF ARKANSAS)
COUNTY OF JEFFERSON)§

AFFIDAVIT

I, HENRY A. HARMON, after first being duly sworn, do hereby swear, depose and

state that:

Kayla Noel - Emsweller, Records Supervisor of Centralized Records
has in fact incorrectly misinterpreted the sentencing order, stating
it states offense #1 dkt #2012-515 is concurrent to dkt #1999-1301. There's
nowhere in sentencing order stating this. The resentence was for both
offense #1 and offense #2 clearly stating both sentences are consecutive.
These sentences became the controlling sentence in which is 45 years.
The offense dkt #1999-1301 was 35 year sentence for Theft of property.
Offense #1 dkt #2012-515 and offense #2 dkt #2012-515 are held within
same case, on same docket number. The sentencing order clearly
states the way it is to run, as stated on order from Judge Leon
Johnson to this legal matter.

Affiant request Adam Jackson, Assistant Attorney General to correct
this matter, in which you stated a negotiated plea to manslaughter and
robbery, consecutive sentences of five and forty years in response petition on

11/27/2019. I further swear that the statements, matters and things contained herein are true and accurate to
the best of my knowledge, information and belief.

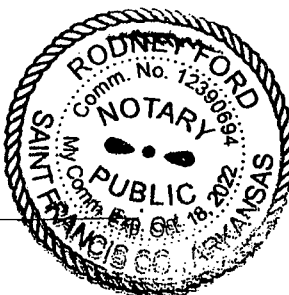
12/23/19
DATE

Henry A. Harmon #103609
AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, on this 23 day of

Dec, 20 19.

Oct 23, 2022
My commission expires:



[Signature]
NOTARY PUBLIC

VERIFICATION

I, Henry A. Harmon, verify that the foregoing is true and correct, to the best of my knowledge and belief, that the petitioner has completed this petition in good faith, except as to matters based upon information and belief, as to those I believe them to be true, under the penalty of perjury.

Signed: _____

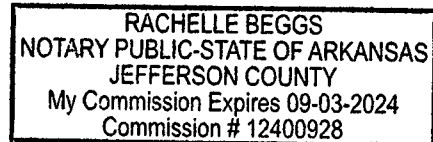
Date: 2/08/2023

Executed at: Barbara A. Ester Unit
Pine Bluff, Arkansas

Henry A. Harmon, pro se

NOTARY

STATE OF ARKANSAS)
)
COUNTY OF JEFFERSON)



Subscribed and Sworn to before me, a notary public, on this 8, day
of February 2023.

9/3/2024
My Commission Expires

Notary Public