Cite as 2013 Ark. 248

SUPREME COURT OF ARKANSAS

No. CV-11-1124

RONNIE LEE SMITH APPELLANT V. LARRY MAY, DEPUTY DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION; GARY MUSSELWHITE, LIEUTENANT, ARKANSAS DEPARTMENT OF CORRECTION, PINE BLUFF UNIT; AND OFFICER PATTERSON, CLASSIFICATION OFFICER, ARKANSAS DEPARTMENT OF CORRECTION APPELLEES	**Opinion Delivered** June 6, 2013 APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT, CV-11-447, HON. JODIE RAINES DENNIS, JUDGE AFFIRMED.

PER CURIAM

Appellant Ronnie Lee Smith, an inmate in the Arkansas Department of Correction (ADC), appeals the dismissal of his complaint against appellees ADC Deputy Director Larry May, ADC Lieutenant Gary Musselwhite, and ADC Classification Officer Patterson. On motion of appellees, the circuit court dismissed the action with prejudice, finding the dismissal constituted a "strike" under Arkansas Code Annotated section 16-68-607 (Repl. 2005), which precludes an incarcerated person from bringing a civil action or an appeal therefrom when he has, on three or more prior occasions, brought an action that was frivolous, malicious, or failed

to state a claim upon which relief may be granted.[1] We affirm the dismissal.

In July 2011, appellant filed a complaint in the Jefferson County Circuit Court seeking injunctive relief and damages against appellees for their refusal to restore appellant's Class I-B inmate status, which provides awards of furloughs, their refusal to secure and provide to appellant the privileges of Class I-B inmate status, and their refusal to allow appellant's participation in the prison's hobby-craft program.

In his complaint, appellant asserted that he was awarded Class I-B inmate status in September 2007 while incarcerated at the Jefferson County jail (JCJ), that he was removed from that status in December 2008 when he was transferred to ADC's Varner Unit, and that he was again awarded and later removed from Class I-B inmate status in 2010 while incarcerated at the Varner Unit. Appellant further asserted in his complaint that while incarcerated at the JCJ, his name was placed on a wait-list for participation in a hobby-craft program and that his name was near the top of the list. Upon transfer to the Varner Unit, appellant contended in his complaint, his name was placed at the bottom of the wait-list rather than in accordance with his date of

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[1]Arkansas Code Annotated section 16-68-607 provides:

> In no event shall an incarcerated person bring a civil action or appeal a judgment in a civil action or proceeding under the Arkansas indigency statutes if the incarcerated person has on three (3) or more prior occasions, while incarcerated or detained in any facility, brought an action that is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the incarcerated person is under imminent danger of serious physical injury.

A dismissal of an incarcerated person's action as frivolous, malicious, or for failure to state a claim upon which relief may be granted is commonly referred to as a "strike" under the statute. *See, e.g.*, *McArty v. Hobbs*, 2012 Ark. 257 (per curiam).

application at the JCJ.[2] Finally, appellant alleged in his complaint that, after being denied participation in a work-release program, he was told about information in his prison file, which he claimed to be false.[3]

In response to appellant's complaint, appellees filed a motion to dismiss on the grounds that, because appellant's complaint was not filed against appellees in their individual capacities, it was barred by the doctrine of sovereign immunity and failed to state a claim on which relief could be granted. Appellees further asserted that appellant's complaint should be counted as a strike pursuant to Arkansas Code Annotated section 16-68-607. Appellant responded to appellees' motion to dismiss, alleging that his complaint did, in fact, specify that suit was being brought against appellees individually rather than in their official capacities.

On September 23, 2011, the circuit court entered an order of dismissal, dismissing appellant's complaint with prejudice. In its order, the circuit court found appellees' arguments regarding sovereign immunity and failure to state a claim to be well-founded and further concluded that dismissal of appellant's action constituted a strike pursuant to section 16-68-607. Appellant now brings this appeal.

When reviewing a circuit court's order of dismissal, we treat the facts alleged in the

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[2]Appellant acknowledged in his complaint that the Varner Unit's policy allows only active hobby-craft cards to be retained, which appellant did not have at the time of his transfer to the Varner Unit.

[3]Appellant alleged in his complaint that he was denied participation in the work-release program because of a notation in his prison file indicating that he was suspected of planning an escape. Appellant further alleged that upon investigating that notation, he was informed of another item in his file, which he also claimed to be false, indicating that he and his girlfriend fought on one occasion during visiting hours.

complaint as true and view them in the light most favorable to the plaintiff. *Veverka v. Gibson*, 2013 Ark. 59. In testing the sufficiency of a complaint on a motion to dismiss, all reasonable inferences must be resolved in favor of the complaint, and all pleadings are to be liberally construed. *Dockery v. Morgan*, 2011 Ark. 94, 380 S.W.3d 377. Arkansas Rule of Civil Procedure 8(a)(1) requires that a complaint state facts, not mere conclusions, in order to entitle the pleader to relief. *Id.* Only facts alleged in the complaint are treated as true, not the plaintiff's theories, speculation, or statutory interpretation. *Id.* When reviewing a dismissal for failure to state a claim under Rule 12(b)(6), our standard of review is whether the trial court abused its discretion in dismissing the complaint. *Id.*

On appeal, appellant's brief-in-chief fails to set forth specific allegations of error against the circuit court in dismissing his complaint; nor does he provide any citation to authority. Rather, appellant's argument consists mostly of a recitation of the alleged facts pertaining to his underlying claims against appellees. We have repeatedly declined to address arguments, even constitutional arguments, that are not supported by citation to legal authority or convincing argument, and we will not address an appellant's arguments when it is not apparent without further research that the argument is well taken. *Boivin v. Hobbs*, 2011 Ark. 384 (per curiam).

Notwithstanding the fact that appellant has failed to provide us with specific allegations of error supported by citation to authority, the issues that can be identified in appellant's brief do not warrant a reversal of the circuit court's order of dismissal. The issues identified are whether appellant's complaint was barred by sovereign immunity and whether it failed to state

a claim upon which relief could be granted.

> The law regarding sovereign immunity is well settled:
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> > Sovereign immunity is jurisdictional immunity from suit. This defense arises from Article 5, Section 20, of the Arkansas Constitution, which provides: "The State of Arkansas shall never be made a defendant in any of her courts." As we stated long ago in *Pitcock v. State*, 91 Ark. 527, 535, 121 S.W. 742 (1909), "[A] sovereign State cannot be sued except by its own consent; and such consent is expressly withheld by the Constitution of this State." In *Brown v. Arkansas State HVACR Lic. Bd.*, 336 Ark. 34, 984 S.W.2d 402 (1999), we pointed out that sovereign immunity provides jurisdictional immunity from suit; where the pleadings show the action is one against the State, the trial court acquires no jurisdiction.

Hanks v. Sneed, 366 Ark. 371, 379, 235 S.W.3d 883, 888 (2006) (citing *Fegans v. Norris*, 351 Ark. 200, 206, 89 S.W.3d 919, 923–24 (2002)). Thus, where the pleadings indicate that the action is one against the State, the circuit court acquires no jurisdiction. *Fegans*, 351 Ark. 200, 89 S.W.3d 919.

Appellant's complaint was brought against appellees in their official capacities. He did not specify in his complaint whether he also sought relief against appellees in their individual capacities; nor did he seek to amend his complaint to name appellees in their individual capacities subsequent to the filing of appellees' motion to dismiss. That being said, to the extent that appellant makes a cognizable argument in his brief-in-chief, he asserts that he was the victim of another inmate, who placed false information in his prison file; that appellees assented to the misbehavior of this inmate; and that the act of appellees' assenting to these false entries was outside the scope of their employment and, thus, were actions that they took in their individual capacities rather than their official capacities. Having examined appellant's complaint, however,

we find no evidence that the action was brought against appellees individually.

Where a judgment in favor of the plaintiff will operate to control the action of the State or subject it to liability, the complaint is treated as one against the State. *Hanks*, 366 Ark. 371, 235 S.W.3d 883. The named defendants in the instant case are employees of the State, and in his prayer for relief, appellant requested injunctive relief to have appellees remove certain information from his prison file. Appellant further sought money damages from appellees. Thus, if judgment were rendered in favor of appellant, it would operate to control the actions of the ADC, a state agency, and would further subject the ADC to liability. This State's constitution prohibits such a judgment, and for this reason, the circuit court was correct in dismissing appellant's complaint pursuant to article 5, section 20, of the Arkansas Constitution.

Moreover, we have consistently recognized that due to their specialization, experience, and greater flexibility of procedure, administrative agencies are better equipped than the courts to analyze legal issues dealing with their agencies. *Crawford v. Cashion*, 2010 Ark. 124, 361 S.W.3d 268 (per curiam). Specifically, the administration of prisons has generally been held to be beyond the province of the courts. *Id.* Thus, we have consistently declined to dictate the operation of the Arkansas Department of Correction except in circumstances where the appellant asserts an infringement upon constitutional rights. *Id.*

In the instant case, appellant does not raise a legitimate constitutional issue. Appellant asserts that his due-process rights were violated and that he was subjected to cruel and unusual punishment because of appellees' refusal to reinstate his Class I-B inmate status, to secure and

provide to appellant the privileges associated with Class I-B inmate status, and to allow appellant's participation in the prison's hobby-craft program.

The law is well settled that prisoner classification is committed to the discretion of the prison officials and that an inmate does not have a protected right to any particular classification. *Crawford*, 2010 Ark. 124, 361 S.W.3d 268 (citing Ark. Code Ann. § 12-29-202(a)(3), (c)). "Even a loss of class status and privileges that impacts meritorious good time does not compromise a liberty interest." *Id.* at 7, 361 S.W.3d at 273. Appellant does not have a protected right or interest in a particular classification status or that status's privileges; nor does appellant have a protected right or interest in other privileges that may be available to inmates, such as a hobby-craft program.

With regard to appellant's claim that he is being subjected to cruel and unusual punishment, the general rule is that unless a prison official "knows of and disregards an excessive risk to inmate health or safety," the inmate cannot be found liable under the Eighth Amendment. *Id.* at 8, 361 S.W.3d at 273. "When the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment." *Id.* (citing *DeShaney v. Winnebago Cnty. Dep't of Social Servs.*, 489 U.S. 189, 200 (1989)). Here, appellant merely alleges cruel and unusual punishment in a conclusory fashion; he does not demonstrate that any of the named appellees knew of and disregarded an

excessive risk to his health and safety. Viewing the facts alleged in the complaint as true and in the light most favorable to appellant, we cannot say that appellant's complaint contained sufficient facts to support a claim of constitutional infringement.

Appellant fails to make any argument on appeal regarding the circuit court's treatment of the dismissal as a strike pursuant to Arkansas Code Annotated section 16-68-607; thus, we need not address this matter because it has been abandoned for purposes of appeal. *Hobbs v. Jones*, 2012 Ark. 293, ___ S.W.3d ___.

Accordingly, we affirm the circuit court's dismissal of the complaint on the grounds that it is barred by sovereign immunity and for failure to state a claim on which relief could be granted.

Affirmed.

Ronnie Lee Smith, pro se appellant.

Dustin McDaniel, Att'y Gen., by: *Dennis R. Hansen*, Ass't Att'y Gen., for appellees.