

**IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE  
EASTERN GRAND DIVISION**

**FILED**

**DEC 28 2009**

Tennessee Claims Commission  
CLERK'S OFFICE

**RICKY FLAMINGO BROWN, SR. #134855**

**Claimant,**

**v.**

**Claims Commission No. T20091412**

**STATE OF TENNESSEE,**

**Defendant.**

COMPUTER \_\_\_\_\_  
DOCKSTED \_\_\_\_\_  
C/B-COMM \_\_\_\_\_  
DOA \_\_\_\_\_  
AG \_\_\_\_\_  
ALS \_\_\_\_\_  
FEE PAID \_\_\_\_\_  
NOTICE SENT \_\_\_\_\_  
FILED \_\_\_\_\_

**ORDER GRANTING STATE'S MOTION TO DISMISS CLAIM**

Ricky Flamingo Brown, Sr. is currently in the custody of the Tennessee Department of Correction and is housed at the Northeastern Correctional Facility in Mountain City, Tennessee.

This is Mr. Brown's latest claim filed with the Commission.<sup>1</sup>

This claim, consisting of some sixty-seven (67) pages, was filed with the Division of Claims Administration on June 18, 2009, and requested compensatory damages in the amount of Fifty Thousand Dollars (\$50,000.00); punitive damages in the amount of Fifty Thousand Dollars (\$50,000.00); "nominal damages A trifling sum" awarded Fifty Thousand Dollars (\$50,000.00); and pecuniary damages in the amount of Fifty Thousand Dollars (\$50,000.00).<sup>2</sup>

Subsequently, on September 16, 2009, the claim was transferred from the Division

<sup>1</sup> Mr. Brown currently has three other claims now pending before the Commission.

<sup>2</sup> The coversheet for this claim requests total damages in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) and states that those damages are for seven days in segregation, emotional distress, and civil rights violations.

of Claims Administration to the Commission.

On October 28, 2009, Mr. Brown filed a document which he styled "Formal Complaint" with the Commission. The State, on December 16, 2009, filed a Motion to Dismiss this claim pursuant to Tennessee Rules of Civil Procedure, Rule 12.02(1) asserting that the Commission does not have subject matter jurisdiction over alleged First Amendment retaliation claims.

Subsequently, Mr. Brown also filed a Motion for Preliminary Injunction against the officers and officials at the NECX facility on November 12, 2009. The State has now filed a Response in opposition to the motion for preliminary injunctive relief in response to that claim. Since the Commission lacks jurisdiction over the claims alleged, the Commission DENIES the Claimant's Motion.

The thrust of all of Mr. Brown's filings is that he is being retaliated against by various officers and officials at NECX, including the warden, because he has filed grievances at the institution and contacted various state officials, including the office of Governor Bredesen, as well as the Federal Bureau of Investigation, regarding allegations of improper sexual conduct by correctional officers, importation of tobacco and illegal drugs into NECX, and the temporary holding and review of legal documents which he had prepared regarding conditions at NECX. Mr. Brown alleges that in retaliation for bringing these conditions to the attention of state and federal officials, he has been retaliated against through various disciplinary procedures, including being placed in segregation, i.e. – removal from the general population at NECX. Mr. Brown also complains that he is being punished for his activities by being denied transfer to another facility where he could be placed in a sexual offender program. He also claims that his access to certain prison jobs is being intentionally blocked by prison employees and officials because of his various complaints

regarding conditions at NECX.

First, this claim must be **DISMISED** since Mr. Brown has requested that this Commission order injunctive relief to address the issues he complains of.

Tennessee Code Annotated, Section 9-8-307(d) is important in deciding this case. That section of the Tennessee Claims Commission Act reads as follows:

**9-8-307. Jurisdiction Claims Waiver of actions Standard for tort liability Damages Immunities Definitions Transfer of claims.**

**(d) The state will be liable for actual damages only.** No award shall be made unless the facts found by the commission would entitle the claimant to a judgment in an action at law if the state had been a private individual. **The state will not be liable for punitive damages and the costs of litigation other than court costs. The state will not be liable for willful, malicious, or criminal acts by state employees,** or for acts on the part of state employees done for personal gain. The state may assert any and all defenses, including common law defenses, which would have been available to the officer or employee in an action against such an individual based upon the same occurrence. The state may assert any absolute common law immunities available to the officer or employee, however, good faith common law immunity may not be asserted. If the claimant is successful with any claim filed with the claims commission after January 1, 1985, the state shall pay such interest as the commissioner may determine to be proper, not exceeding the legal rate as provided in 47-14-121. In contract actions, interest may be awarded, but if the rate of interest is provided in the contract, the award of interest shall be at that rate. (Emphasis Supplied.)

Under this subsection, it is clear that the General Assembly of the State of Tennessee has not given the Commission the power to order extraordinary relief in the form of an injunction. Additionally, this section also makes it clear that this Commission cannot award punitive damages.

Secondly, this subsection of the Tennessee Claims Commission Act states very clearly that "[t]he State will not be liable for willful, malicious, or criminal acts by state

employees...” Mr. Brown has clearly alleged intentional or willful conduct on the part of state employees at NECX as well as criminal actions undertaken for malicious reasons. Since Mr. Brown’s complaint alleges willful, malicious, or criminal acts by state employees, this Commission cannot award damages based upon those complaints under the provisions of the Tennessee Claims Commission Act.

The State argues correctly that this Commission has not jurisdiction over allegations of negligent deprivation of constitutional rights since an amendment to the Tennessee Claims Commission Act in 1989. And, of course, this limitation on the Commission’s jurisdictional power has been commented on by the highest court of this state. (See *Shell v. State*, 893 S.W.2d 416, at 418-419 (Tenn. 1995).)

However, here, Mr. Brown has alleged intentional acts on the part of various state employees at NECX and as discussed above, intentional acts on the part of state employees, whether comprised of willful, malicious, or criminal conduct by employees, simply are not with the Commission’s power to adjudicate under Tennessee Code Annotated, section 9-8-307(d).

Therefore, because this Commission does not have the jurisdiction to order an injunction in this case or to award monetary damages based on those willful, malicious, and criminal acts by state employees alleged by Mr. Brown, the State’s Motion to Dismiss Mr. Brown’s claim for damages and injunctive relief is hereby **GRANTED** and this claim must be **DISMISSED** pursuant to Tennessee Rules of Civil Procedure, Rule 12.02(1).

This 2<sup>nd</sup> day of December, 2009.



**William O. Shults, Commissioner**  
P.O. Box 960  
Newport, TN 37822-0960

**CERTIFICATE**

I certify that a true and exact copy of the foregoing Order has been transmitted to:

**Ricky Flamingo Brown #134855  
NECX  
P.O. Box 5000  
Mountain City, TN 37683-5000**

**Office of the Attorney General  
P.O. Box 20207  
Nashville, TN 37202-0207**

This the 28 day of December, 2009.

M. E.