

IN THE CLAIMS COMMISSION FOR THE STATE OF TENNESSEE
WESTERN DIVISION

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LYNN FRYER,

Claimant

v.

Claim Number T20140687
REGULAR DOCKET

STATE OF TENNESSEE,

Defendant

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

This cause came to be heard on *Defendant's Motion to Dismiss, Claimant's Response to Defendant State of Tennessee Motion to Dismiss and Amended Complaint* and, indeed, the record as a whole.

Claimant alleges he was not awarded pre-trial jail credits mandated by Tenn. Code Ann. § 40-23-101(c) until September 7, 2010. He further avers that his probation was revoked in April, 2010, and insists that his sentence had actually expired before the probation revocation proceedings began. Thus, he insists, if the pre-trial credits had been awarded in a timely manner as required by statute, there would have been no probation to revoke.

Defendant correctly avers that the gravamen of Claimant's complaint is for negligent deprivation of a statutory right and that the Commission has no jurisdiction to hear such a claim unless the statute contains a private right of action. §9-8-307(a)(1)

(N) The Commission **FINDS** that no private right of action is conferred in the statutes cited by Claimant (Tenn. Code Ann. §§40-23-1-3(c), 40-35-310, or 40-35-311) and that this Commission does not have jurisdiction over this claim under §9-8-307(a)(1)(N).

Claimant also avers that certain state employees acted deliberately to deprive him of his constitutional rights even after being made aware of the problem with the sentence credits.

The Commission **FINDS** that it has no jurisdiction over claims regarding negligent deprivation of constitutional rights and further that it has no jurisdiction whatsoever over the alleged “willful, malicious or criminal acts.” §9-8-307(d)

In addition, under Tennessee law, an inmate (or former inmate) challenging the calculation of his sentence first must seek a declaratory order regarding the computation with the Tennessee Department of Correction. *Bonner v. Tennessee Department of Correction*, 84 S.W.3d 576, 583 (Tenn. Ct. App. 2001) Under Tenn. Code Ann. Sec. 4-5-322, if the inmate is unable to obtain a declaratory order in the TDOC proceeding, he or she may then request a declaratory judgment. Mr. Fryer has made no claim that he followed this procedure.

For the foregoing reasons, the State’s motion to dismiss is **GRANTED**.

IT IS SO ORDERED.



NANCY C. MILLER-HERRON,
COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed by first class U.S. mail, postage prepaid, electronically transmitted, or hand-delivered to:

Mr. Lynn Fryer
607 North Highland Ave.
Jackson, TN 38301

Ms. Laura Miller, Esq.
Assistant Attorney General
Office of the Attorney General
P.O. Box 20207
Nashville, TN 37202-0207

on this the 9th day of June, 2014.



PAULA SWANSON, Clerk
Tennessee Claims Commission