

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE  
MIDDLE DIVISION

FILED  
IN THE CLAIMS COMMISSION  
CLERK'S OFFICE

2014 JUN 11 A 9:51

BRETT PATTERSON #120980, )  
 )  
 Claimant, ) Claim No. I20130663  
 )  
 vs. )  
 )  
 STATE OF TENNESSEE, )  
 ) Regular Docket  
 Defendant. )

**FINAL JUDGMENT FOR CLAIMANT**

This matter came before, Robert N. Hibbett, Commissioner and judge of the facts and law, sitting as the Trial Court of Record. This prisoner property claim is being adjudicated on the record without a trial pursuant to T.C.A. 9-8-403(h). Although this is a Regular Docket Claim, subject to appeal, trials are not conducted on inmate property claims.

(h) Claims based on the negligent care, custody or control of personal property by persons in the legal custody of the state shall proceed on affidavits only, except where the commission determines that witnesses should be heard.  
Tenn. Code Ann. § 9-8-403(h).

The Claimant, Brett Patterson, is an inmate in the custody of the Tennessee Department of Correction. The Claimant alleges that his art supplies were confiscated pursuant to a new policy promulgated by the former Warden of

Turney Center Industrial Complex. He was then forced to either donate the supplies to charity or mail the supplies out of the prison. The policy concerning having art supplies was reversed but pursuant to policy, his art supplies cannot be returned to him. The Claimant has requested an award of \$585.47 to reimburse him for the confiscated art supplies.

### **Motion to Strike Claimant's Affidavit**

The State has filed a Motion to Strike the Claimant's affidavit filed May 6, 2014 because it was not filed pursuant the Tribunal's Scheduling Order. It also objects to a number of the Claimant's assertions. After considering the State's motion and the Claimant's response, the Tribunal finds that substantive due process demands that the affidavit be allowed as an addition to the record. This does not mean that every statement included in the affidavit or any affidavit filed by the parties is accepted by the Tribunal as fact.

### **JURISDICTION**

The authority of the Claims Commission to render damages is set forth by statute. If a claim falls outside of the categories specified in Tenn. Code Ann. § 9-8-307(a), then the State retains its immunity from suit, and a claimant may not seek relief from the State. *Stewart v. State*, 33 S.W.3d 785, 790 (Tenn. 2000). The

Claims Commission has authority to adjudicate this matter under Tenn. Code. Ann. § 9-8-307(a)(1)(F) concerning the negligent care, custody or control of personal property.

### **FINDINGS OF FACT**

On or about December 5, 2011, the Claimant was transferred from West Tennessee State Penitentiary to Turney Center Industrial Complex (TCIX). The State admits that prior prison policy allowed inmates the possession of art supplies in their cells. Upon arrival at TCIX, the Claimant was informed that he could not keep his art and craft supplies pursuant to recent change in policy decided and implemented by the former Warden, Jerry Lester. The art supplies were confiscated and kept in storage for four months pending the final disposition of the Claimant's grievance process. At the end of the process, the Claimant was given the choice of either shipping his supplies out of prison or donating them to charity pursuant to TDOC Policy 504.2. The Claimant elected to mail these supplies to Alex Friedman. On April 25, 2012, after the Claimant had mailed his supplies out of the prison, Warden Jerry Lester amended his policy to allow a few small arts and crafts items in the inmates' individual cells. The Claimant is not allowed to receive his art supplies back from Mr. Friedman.

TDOC policy mandates that all materials must come directly from a manufacturer.

### CONCLUSIONS OF LAW

Although the Warden's change of policy banning art supplies in individual cells seems ill advised, it is not within the Tribunal's jurisdiction or authority to determine Tennessee Department of Correction (TDOC) policy. The General Assembly has given TDOC wide latitude to determine its own policies and procedures to ensure the safekeeping of all inmates. Our Supreme Court has validated this mandate by stating:

The legislature has provided the TDOC considerable deference and broad discretionary powers to enable the TDOC to manage its tremendous responsibilities. *See* Tenn.Code Ann. § 4-6-102 (stating, "The management and government of the state penitentiaries for adults are vested in the department of correction. It has all the power necessary for the full and efficient exercise of the executive, administrative, and fiscal supervision over all such institutions, except as otherwise expressly provided."). This broad grant of legislative discretion necessarily includes the power to establish policies and procedures for handling disciplinary matters. This broad grant of discretion also envisions that those persons intimately involved with the intricacies of the prison system and not the voting public are best equipped to establish policies and procedures for inmate discipline.

*Mandela v. Campbell*, 978 S.W.2d 531, 534 (Tenn. 1998)

Therefore, it is solely within the authority of the Commissioner to determine what inmates may keep in their individual cells. It was lawful when the Warden decided to change policy and no longer allow art and crafts supplies in the inmates' cells.

However, the disposition of legal property is another matter. There is no showing by the State that the subject art supplies are contraband. The General Assembly has enumerated items that are considered contraband in a prison facility.

(a) As used in this section, unless the context otherwise requires, "telecommunication device" means any type of instrument, device, machine, or equipment that is capable of transmitting telephonic, electronic, digital, cellular or radio communications, or any part of such instrument, device, machine or equipment that is capable of facilitating the transmission of telephonic, electronic, digital, cellular or radio communications. "Telecommunication device" shall include, but not be limited to, cellular phones, digital phones and modem equipment devices.

(b) It is unlawful for any person to:

(1) Knowingly and with unlawful intent take, send or otherwise cause to be taken into any penal institution where prisoners are quartered or under custodial supervision any weapons, ammunition, explosives, intoxicants, legend drugs, or any controlled substances or controlled substance analogues found in chapter 17, part 4 of this title;

(2) Knowingly possess any of the materials prohibited in subdivision (b)(1) while present in any penal institution where prisoners are quartered or under custodial supervision without the express written consent of the chief administrator of the institution; or

(3) Knowingly and with unlawful intent take, send or otherwise cause to be taken into any penal institution where prisoners are quartered or under custodial supervision any telecommunication device.

(c) A violation of subdivision (b)(1) or (b)(2) is a Class C felony. A violation of subdivision (b)(3) is a Class E felony.

Tenn. Code Ann. § 39-16-201

Art and crafts do not fall under any legal definition of contraband that is known to the Tribunal. Because these items are not contraband, they are not subject to forfeiture. The Court of Appeals looked at the subject of cash money being found in a cell and forfeited to the State pursuant to TDOC policy. Although it found that the temporary confiscation of otherwise legal property was lawful, the permanent forfeiture of the cash was not.

We hold that, under Tennessee law, the Department of Correction cannot permanently confiscate cash found in an inmate's possession in violation of prison rules unless the legislature has specifically authorized such a forfeiture. The code sections relied upon by the state, Tenn. Code Ann. §§ 4-3-603 and 4-3-606 (1985), contain only general statements as to the powers and duties of the commissioner and the Department of Correction. Neither these code provisions nor others to which they refer make any mention of forfeiture of property found in an inmate's possession in violation of prison rules. Therefore, we conclude that the commissioner was without statutory authority to enact TDOC policy 208.06.

We do not decide the extent of the commissioner's authority to confiscate permanently other types of property found in an inmate's possession in violation of prison rules. It stands to reason, however, that the same analysis applies to other items of property which one might possess lawfully when not in prison. *See Balkcom*, 263 S.E.2d at

276 (drawing distinction between contraband that is “inherently unlawful” and contraband that “may ordinarily be used in a beneficial and useful manner.”)

*Blackmon v. Norris*, 775 S.W.2d 367, 369-70 (Tenn. Ct. App. 1989)

The same holds true in this claim. Although the Warden could lawfully confiscate art and crafts supplies that had been lawfully held by the inmate, he could not force a permanent forfeiture of those items. The State would argue that it was the Claimant’s choice to mail the items out of the prison or donate them to charity. This was not a choice made out of free will. The Claimant was forced by policy to relinquish control of these items permanently. Because these items cannot be returned to the Claimant, he is forced to buy new supplies directly from a manufacturer. Ultimately, the forced relinquishment of his art supplies was a constructive permanent forfeiture. The Tribunal does not have the authority to direct the Commissioner to allow the Claimant to receive the supplies back from Mr. Friedman. It can only award monetary damages.

The Claimant has filed proof and affidavits showing the value of the art supplies totaling \$585.47. The Tribunal accredits this proof but shall not allow the full value for used art supplies. The Tribunal will award judgment for 75% of the value which totals \$439.10.

**IT IS THEREFORE, ORDERED, DECREED, AND ADJUDGED:**

1. That the State is found liable for the loss of the Claimant's property.
2. That the Claimant is awarded \$439.10 for the loss of his property.
3. That the court costs, if any, are taxed to the State.
4. That this is a final judgment for purposes of appeal.

ENTERED this 9 day of June 2014.



ROBERT N. HIBBETT  
Claims Commissioner  
Sitting as the Trial Court of Record

**CERTIFICATE OF SERVICE**

This is to certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

ERIC FULLER  
Attorney General's Office  
P.O. Box 20207  
Nashville, TN 37202-0207  
(615) 532-2563

BRETT PATTERSON #120980  
TCIX - Unit 2A-216  
1499 R.W. Moore Memorial Hwy.  
Only, TN 37140-4050

This 11<sup>th</sup> day of June, 2014.

*Paula Swanson*

---

PAULA SWANSON  
Administrative Clerk  
Tennessee Claims Commission