

SUPREME COURT OF ARKANSAS

**Willie Gaster Davis, Jr. v. Wendy Kelley, Director, Arkansas
Department of Correction; James DePriest, Legal Counsel, Arkansas
Department of Correction; Leslie Rutledge, Arkansas Attorney
General; Joyce Gooley, Mailroom Supervisor of Maximum Security;
and Brandace Binns, Corporal Security of Maximum Security**

2021 Ark. 63 (2021) · No. CV-19-663 · Decided March 18, 2021

SUMMARY

The Arkansas Supreme Court affirmed the dismissal of Willie Gaster Davis Jr.'s petition for a writ of mandamus and complaint for conversion concerning access to his crime-lab file. The court held that Davis failed to establish a clear and certain right to the entire file or a ministerial duty by the named defendants, and failed to state a conversion claim. The court also designated the appeal as a strike based on Davis's alteration of court documents.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam; Shawn A. Womack; Kemp, C.J.; Baker, J.; Hudson, J.; Wynne, J.
JURISDICTION	Arkansas
DECIDED	March 18, 2021
DOCKET	CV-19-663
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Jefferson County Circuit Court order dismissing with prejudice a petition for writ of mandamus and a complaint for conversion under Arkansas Rule of Civil Procedure 12(b)(6), and imposing a statutory strike.
STANDARD OF REVIEW	On review of an order granting a motion to dismiss, the court treats the facts alleged in the complaint as true, views them in the light most favorable to the plaintiff, resolves reasonable inferences in favor of the complaint, and liberally construes the pleadings. Under Arkansas fact-pleading rules, the complaint must state facts rather than mere conclusions. The dismissal is reviewed for abuse of discretion.

PRECEDENTIAL VALUE	Published Arkansas Supreme Court decision and binding precedent in Arkansas.
PARTIES	Willie Gaster Davis, Jr. v. Wendy Kelley, Director, Arkansas Department of Correction, James DePriest, Legal Counsel, Arkansas Department of Correction, Leslie Rutledge, Arkansas Attorney General, Joyce Gooley, Mailroom Supervisor of Maximum Security, Brandace Binns, Corporal Security of Maximum Security

TOPICS

conversion civil procedure service of process standard of review appellate procedure

PRACTICE AREAS

civil procedure appellate procedure mandamus conversion prisoner litigation

QUESTIONS PRESENTED

1. Whether the circuit court had personal jurisdiction over the Attorney General despite allegedly insufficient service of process.
2. Whether the circuit court improperly dismissed the action before the expiration of the service deadline and before Davis could conduct discovery.
3. Whether Davis established a clear and certain right and a ministerial duty supporting mandamus to compel prison officials and the Attorney General to release the entire crime-lab file.
4. Whether Davis stated a claim for conversion based on confiscation of the crime-lab file.
5. Whether the circuit court's designation of the dismissal as a statutory strike should be disturbed and whether the appeal itself warranted a strike.

HOLDINGS

1. The Attorney General's voluntary appearance without objecting to insufficient service vested the circuit court with personal jurisdiction, and Davis's service argument was also unpreserved because it was not raised below.
2. Davis was not entitled to a writ of mandamus because he failed to show a clear and certain right to the entire crime-lab file and failed to identify a ministerial duty imposed on any of the appellees.
3. Davis failed to state a claim for conversion because he did not allege facts establishing a right to possess the crime-lab records.
4. The appeal was designated as a strike because Davis brought a malicious action by fraudulently altering court documents to misrepresent the scope of his earlier records request.

KEY QUOTATIONS

“The writ is appropriate if two factors are established: (1) the duty to be compelled is ministerial and not discretionary; and (2) the petitioner has shown a clear and certain right to the relief sought and the absence of any other adequate remedy.” (6)

“A mandamus action enforces the performance of a legal right after it has been established; its purpose is not to establish a right.” (7)

“Conversion is a common law tort action for the wrongful possession or disposition of another’s property.” (8)

“Falsifying evidence to prevail in court is an egregious abuse of the judicial process and undermines the most basic principles of the justice system.” (10)

FACTUAL BACKGROUND

Davis, an Arkansas inmate serving a life sentence for convictions including first-degree murder, previously sought crime-lab information concerning hairs found on his victim through an Arkansas Freedom of Information Act request. In an earlier proceeding, the Arkansas Supreme Court directed the crime lab to release the information Davis had requested, and the crime lab thereafter mailed him the entire file, which prison officials confiscated as contraband. Davis then sued prison officials and the Attorney General, seeking the entire file, including photographs not included in his earlier request, and damages for conversion.

PROCEDURAL HISTORY

Davis sought a writ compelling prison officials and the Arkansas Attorney General to release his entire crime-lab file and sought damages for conversion based on confiscation of the file. The Jefferson County Circuit Court dismissed the action with prejudice, concluding that Davis had already obtained the requested information and had failed to state a claim, and designated the dismissal as a strike. The Arkansas Supreme Court granted Davis permission to pursue a belated appeal and affirmed the dismissal and strike; it also imposed a strike for the appeal based on fraudulent alteration of court documents.

DISPOSITION

affirmed

CASES CITED

- Davis v. State, 330 Ark. 76, 953 S.W.2d 559 (1997)
- Davis v. Deen, 2014 Ark. 313, 437 S.W.3d 694
- Davis v. State, 2017 Ark. 9, 507 S.W.3d 497
- Dockery v. Morgan, 2011 Ark. 94, 380 S.W.3d 377
- Federal Land Bank of St. Louis v. Gladish, 176 Ark. 267, 2 S.W.2d 696 (1928)
- Valley v. Pulaski County Circuit Court, Third Division, 2014 Ark. 112, 431 S.W.3d 916
- Manila School District No. 15 v. Wagner, 357 Ark. 20, 159 S.W.3d 285 (2004)
- Axley v. Hardin, 353 Ark. 529, 110 S.W.3d 766 (2003)

- T.J. ex rel. Johnson v. Hargrove, 362 Ark. 649, 210 S.W.3d 79 (2005)
- Dye v. Diamante, 2017 Ark. 37, 509 S.W.3d 643
- Integrated Direct Marketing, LLC v. May, 2016 Ark. 281, 495 S.W.3d 73
- Perry v. State, 2020 Ark. 32
- Kennedy v. Blankenship, 100 F.3d 640 (8th Cir. 1996)
- Rodgers v. State, 2020 Ark. 272, 606 S.W.3d 72
- Jones v. Ross, 2019 Ark. 283
- Williams v. Porch, 2018 Ark. 1, 534 S.W.3d 152
- McCutchen v. City of Fort Smith, 2012 Ark. 452, 425 S.W.3d 671

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