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CLERK OF THE SHAWNEE COUNTY DISTRICT COURT  
CASE NUMBER: 2023-CV-000122  
PII COMPLIANT



**Court:** Shawnee County District Court  
**Case Number:** 2023-CV-000122  
**Case Title:** Charles Leroy Freeman #0043826 III vs. State of Kansas  
**Type:** Memorandum Decision And Order Regarding Defendants' Motion To Dismiss

SO ORDERED.

A handwritten signature in black ink, appearing to read "M.E. Christopher", with a long, sweeping flourish extending to the right.

/s/ Honorable Mary E Christopher, District Judge

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION EIGHT**

<b>CHARLES LEROY FREEMAN,</b>	)		
<b>Plaintiff,</b>	)		
	)		
v.	)	<b>Case No.</b>	<b>2023-CV-122</b>
	)		
<b>TOPEKA POLICE DEPARTMENT;</b>	)		
<b>RYAN HAYDEN, TPD; and CITY</b>	)		
<b>OF TOPEKA, KANSAS,</b>	)		
<b>Defendants.</b>	)		
_____	)		

**MEMORANDUM DECISION AND ORDER  
REGARDING DEFENDANTS’ MOTION TO DISMISS**

This matter comes before the Honorable Mary E. Christopher on defendants Topeka Police Department Special Victims Bureau, Ryan Hayden, TPD and City of Topeka’s, Motion to Dismiss, filed April 4, 2023. Defendants are represented by their attorney, Shelly Starr. Plaintiff is pro se. There are no appearances and none are necessary.

The Court has reviewed the motion, response, and all supporting briefs of the parties. After careful consideration and being fully apprised on the premises, the Court finds as follows:

**I. OVERVIEW**

Plaintiff filed a pro se Petition in the District Court of Shawnee County, Kansas against the defendants, demanding civil damages for alleged violation of his constitutional rights stemming from his alleged aggravated kidnapping by a police officer. Plaintiff alleges he was arrested/kidnapped by a police officer who knew the statutes of limitation had run on charges against him of aggravated criminal sodomy and indecent liberties with a child.

Defendants assert that plaintiff fails to state a claim upon which relief can be granted, as he was later convicted on several of the charges of which he was accused. In addition, defendants argue because plaintiff failed to file a pre-suit notice of claim as required under K.S.A. 12-105b, defendants move to dismiss this case for lack of subject matter jurisdiction.

## **II. FACTS**

1. “In June 2016, C.K. and B.F. both disclosed past instances of sexual abuse by their father, Freeman” *State of Kansas v. Charles L. Freeman*, No. 121,935, (Kan. Ct. App., Dec. 3, 2021) (unpubl.), slip op. 2.
2. Plaintiff was arrested by Topeka Police Detective Ryan Hayden on November 4, 2016. (Pet., p. 2, ¶ 3).
3. The arrest warrant filed November 15, 2016, lists eight criminal counts; the dates of the crimes committed in each count are described as having occurred: “[o]n or about the 1<sup>st</sup> day of January, 2010 through the 1<sup>st</sup> day of January, 2013....” (K.S.A. 60-409 [judicial notice]; SN Co. Dist. Ct. case 2016-CR-002008, arrest warrant, 11-15-16.)
4. The State initially charged Freeman with Sexual Exploitation of a Child under 14 YOA; two counts of Aggravated Indecent Liberties Lewd Fondling with a Child under 14 YOA; and five counts of Aggravated Criminal Sodomy with a Child under 14 YOA. (See SN Co. Dist. Ct. case 2016-CR-002008.)
5. “The State amended its complaint ... [to] change the dates of the incidents to reflect they occurred from January 1, 2007, through January 1, 2012.” *State of Kansas v. Charles L. Freeman*, No. 121,935, (Kan. Ct. App., Dec. 3, 2021) (unpubl.), slip op. 2.

6. “Freeman’s jury trial started on December 4, 2017, where he chose to proceed pro se with standby counsel.” The jury convicted Freeman on all counts. *State of Kansas v. Freeman*, Kan. Ct. App., (Dec. 3, 2021), slip op. 2, 6.

7. Plaintiff Freeman was charged with multiple counts of aggravated indecent liberties with a child; aggravated criminal sodomy. “Prior to releasing the jury to deliberate, the State made an oral motion to amend the complaint a second time to reflect that the charged crimes occurred between July 2, 2008 through August 1, 2011. The district court accepted the State’s second amended complaint for filing.” *State v. Freeman*, slip op. 6.

8. On December 4, 2017, Charles L. Freeman III was convicted by a jury of Sexual Exploitation of a Child under 14 YOA; two counts of Aggravated Indecent Liberties Lewd Fondling with a Child under 14 YOA; and five counts of Aggravated Criminal Sodomy with a Child under 14 YOA. (See SN Co. Dist. Ct. case 2016-CR-002008.)

9. Due to a finding of the Court of Appeals of error in a jury instruction, plaintiff’s convictions on counts 5, 7 and 8 relating to criminal sodomy charges were reversed on appeal. However, Freeman’s convictions and sentences for the remaining aggravated indecent liberties with a child; sexual exploitation of a child; and two counts of aggravated criminal sodomy with a child were affirmed by the Kansas Court of Appeals. (See *State v. Freeman*, Slip op.18.)

10. In this case, plaintiff filed his Petition in Shawnee County District Court on February 27, 2023. (See Ct. file.)

11. Plaintiff’s Petition contends that: “Kan. Stat. Ann. 21-5106(2) (Supp. 1987) require[s] that arrest and prosecution [sic] for aggravated criminal sodomy and indecent liberties with a child, among other offenses, must commence within five (5) years after commission of the offense.” (Pet., p. 3, ¶ 3).

12. The Petition alleges that, by arresting the plaintiff on November 4, 2016, after the statute of limitations had run, Detective Hayden “intentionally and falsely, corruptly, with malice, violated [his] constitutional rights and section 1 of the Kansas Constitution Bill of Rights.” (Pet., p. 3, ¶ 3).

13. Plaintiff alleges Detective Hayden “should have known about the five (5) year statute of limitations before he arrested this plaintiff and committed [sic] aggravated kidnaping [sic] when he moved the plaintiff from point A to point B.” (Pet., p. 3, ¶ 4).

14. K.S.A. 21-5111 defines (p) “Law enforcement officer” as: (1) Any person who by virtue of such person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.” K.S.A. 21-5111(p).

15. The City of Topeka has never received a K.S.A. 12-105b(d) claim from Plaintiff regarding this matter. (Defs’ Motion to Dismiss, p.4.)

16. Plaintiff’s Petition does not plead compliance with K.S.A. 12-105b’s notice of claim requirements.

### **III. ANALYSIS**

Defendants raise several defenses to plaintiff’s claims for relief including lack of subject-matter jurisdiction under K.S.A. 60-212(b)(1); lack of personal jurisdiction under 60-212(b)(2); and failure to state a claim upon which relief can be granted under 60-212(b)(6).

#### **A. Standard of Review**

Kansas law provides that a party may assert certain defenses by motion, including the failure to state a claim upon which relief can be granted. K.S.A. 60-212(b)(6). The Court considers only the well-pleaded facts of the petition when considering a motion to dismiss pursuant to K.S.A.

60-212(b)(6). *Sperry v. McKune*, 305 Kan. 469, 480-81, 384 P.3d 1003 (2016). The district court generally accepts as true the facts alleged by the plaintiff along with any reasonable inferences drawn from those facts. When considering a motion to dismiss, the court must review the petition in the light most favorable to the plaintiff. *Halley v. Barnabe*, 271 Kan. 652, 656, 24 P.3d 140 (2001); *see also Miller v. Glanz*, 948 F.2d 1562, 1565 (10th Cir. 1991) (“The court’s function on a Rule 12(b)(6) motion is not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff’s complaint alone is legally sufficient to state a claim for which relief may be granted.”).

Subject matter jurisdiction establishes the Court’s authority to hear and decide a particular case. *Bradley v. Bear*, 46 Kan. App. 2d 1008, 1012, 272 P.3d 611 (2012) (citing *Kingsley v. Kansas Dept. of Revenue*, 288 Kan. 390, 395, 204 P.3d 562 (2009)). Only if the Court has subject matter jurisdiction over plaintiffs’ claims can it consider whether plaintiffs have stated a claim upon which relief can be granted. Kansas courts have jurisdiction to consider cases that, at a bare minimum, involve parties who have standing; do not contain moot issues; concern ripe issues; and do not present political questions. *Gannon v. State*, 298 Kan. 1107, 1119, 319 P.3d 1196 (2014).

**B. K.S.A. 22-2401 and K.S.A. 21-3106**

Plaintiff alleges in his Petition that Detective Ryan Hayden did not have authority to arrest him due to the effect of the statute of limitations and, therefore, when plaintiff was involuntarily moved from point A to point B, that action constituted aggravated kidnapping. There are several gaping holes in plaintiff’s argument.

A law enforcement officer’s legal authority to arrest a person is set forth in K.S.A. 22-2401, which states:

“A law enforcement officer may arrest a person under any of the following circumstances:

- (a) The officer has a warrant commanding that the person be arrested.
- (b) The officer has probable cause to believe that a warrant for the person's arrest has been issued in this state or in another jurisdiction for a felony committed therein.
- (c) The officer has probable cause to believe that the person is committing or has committed:
  - (1) A felony; or
  - (2) a misdemeanor, and the law enforcement officer has probable cause to believe that:
    - (A) The person will not be apprehended or evidence of the crime will be irretrievably lost unless the person is immediately arrested;
    - (B) the person may cause injury to self or others or damage to property unless immediately arrested; or
    - (C) the person has intentionally inflicted bodily harm to another person.
- (d) Any crime, except a traffic infraction or a cigarette or tobacco infraction, has been or is being committed by the person in the officer's view.

K.S.A. 22-2401.

Under Kansas law, an officer's statutory authority to arrest is triggered by probable cause; the issuance of a warrant; or a crime committed in the officer's view. An officer's authority to arrest is not dependent on performing an assessment of the statute of limitations applicable to each crime charged in the arrest warrant. The purpose for issuing a warrant or summons is to provide the accused with actual notice of the charge or charges against him or her and to ensure that the accused appears before the court for further proceedings. See K.S.A. 22-2304.

This Court additionally notes that K.S.A. 21-3106 was repealed by the Legislature effective July 1, 2011. Any reliance plaintiff places on K.S.A. 21-3106 statutes of limitations set forth in the former statute is misplaced.

Plaintiff's direct appeal of his convictions has concluded and the Kansas Court of Appeals affirmed Freeman's convictions and sentences for two counts of aggravated indecent liberties with

a child; sexual exploitation of a child; and two counts of aggravated criminal sodomy with a child. Plaintiff could have raised the statute of limitations issue on appeal but did not.

Even assuming a five-year statute of limitations somehow applied, plaintiff was arrested on November 15, 2016, within five years of the last date of the dates of the ongoing crimes which were described as having occurred: “[o]n or about the 1<sup>st</sup> day of January, 2010 through the 1<sup>st</sup> day of January, 2013.

Most significant in the analysis here is that a warrant was issued for the arrest of Charles L. Freeman III, so under K.S.A. 22-2401(a), Detective Hayden was legally authorized to arrest plaintiff. Plaintiff’s claims against Detective Hayden, whether for false/wrongful arrest; false imprisonment; malicious prosecution or kidnapping, and against the other defendants based on the November 2016 arrest, are completely frivolous. Viewed in the light most favorable to plaintiff, the Petition fails to state a claim upon which relief can be granted under K.S.A. 60-212(b)(6).

**C. Pre-suit Notice to Municipality Requirement of K.S.A. 12-105b**

K.S.A. 12-105b sets forth a mandatory procedure for submitting notice of claims against municipalities prior to the filing of a lawsuit. Filing a proper notice of claim under K.S.A. 12-105b is a condition precedent to commencing an action against a municipality. Municipality is broadly defined to include many forms of local governmental agencies and offices. Subsection (a) provides that all claims against a municipality must be submitted in writing, in the form of a statement of account or other document.

“K.S.A. 12-105b(d) requires any person with a tort claim against a municipality to submit a written notice of claim before filing suit. The notice must be filed with the clerk or governing body of the municipality and must include certain basic information. One cannot file suit unless and until the notice of claim has been presented and denied in whole or in part. A claim is deemed denied if no action is taken within 120 days. Filing a notice of claim operates to extend the statute of limitations in some situations.”



....

...Kansas courts have consistently held plaintiffs responsible for knowledge of the existence and operation of the statute.”

Sittenauer, Teresa, USE IT OR LOSE IT, 74 MAR J. Kan. B.A. 24 (Mar. 2005).

When a plaintiff fails to meet the requirements of K.S.A. 12-105b, the court is without jurisdiction over any state tort claims asserted against the municipality. *Orr v. Heiman*, 270 Kan. 109, 111, 12 P.3d 387 (2000). “It is a longstanding rule that filing a proper notice of a claim is a prerequisite to filing an action with the district court against a county or other municipality. [Citations omitted.] Failure to provide the statutory notice of a claim in accordance with K.S.A. [2013] Supp. 12–105b precludes relief. [Citation omitted.] Thus, K.S.A. [2013] Supp. 12–105b is jurisdictional.... If the statutory requirements are not met, the court cannot acquire jurisdiction over the municipality.” *Myers v. Board of Jackson County Comm'rs*, 280 Kan. 869, 876–77, 127 P.3d 319 (2006).

Plaintiff’s Petition does not plead compliance with K.S.A. 12-105b’s notice of claim requirements. The City of Topeka has never received a K.S.A. 12-105b(d) claim from Plaintiff regarding this matter. (Defs’ Motion to Dismiss, p.4.) Defendants argue that, due to plaintiff’s failure to comply with K.S.A. 12-105b, any of plaintiff’s claims arising under the Kansas Tort Claims Act must be dismissed for lack of subject matter jurisdiction.

Written notice must be filed before an action can commence and failure to file a notice of claim is a jurisdictional bar. See *Sleeth v. Sedan City Hosp.*, 298 Kan. 853, 870, 317 P. 3d 782, 793 (2014) (“clear legislative intent to disallow the commencement of any actions prior to the filing of the requisite notice.”). In the light most favorable to plaintiff, the Petition fails to establish subject-matter jurisdiction for plaintiff’s tort claims. Because jurisdiction is lacking, dismissal is also appropriate under K.S.A. 60-212(b)(1).

#### **D. Limitations for Tort Claims and Claims Under 42 U.S.C. § 1983**

Defendants point out the statute of limitations for a tort claim of involuntary detention would normally commence as soon as the allegedly wrongful arrest occurred and, if applied here, arguably the limitations period expired years before plaintiff filed this lawsuit. In addition, the statute of limitations is two years for most tort claims and claims under 42 U.S.C. § 1983.

“An action for injury to the rights of another, not arising on contract ...” “shall be brought within two years.” K.S.A. 60-513(a)(4). According to the Petition, plaintiff’s cause of action arose on the date of his arrest on November 4, 2016. Plaintiff would have been aware of his arrest at that time and would have been given a copy of the warrant containing the dates of the crimes charged against him. Thus, it is fair to presume the accrual of plaintiff’s claims occurred in November 2016.

Plaintiff’s Petition was not filed in this matter until February 27, 2023, over six years after his cause of action accrued. Viewed in the light most favorable to plaintiff, any tort claims or claims alleged under 42 U.S.C. § 1983 in the petition were not timely commenced. The Court’s conclusion is that plaintiff’s claims are untimely and futile.

Defendants cite additional reasons for dismissal, which the Court need not discuss, having reached the conclusions herein. Viewed in the light most favorable to plaintiff, the Court concludes that plaintiff’s Petition should be dismissed.

#### **IV. CONCLUSION**

For all the reasons stated above, this Court grants the defendants’ Motion to Dismiss.

**This Memorandum Decision and Order shall constitute the Court’s entry of judgment when filed with the Clerk of this Court. No further journal entry is required.**

**This Order is effective on the date and time shown on the electronic file stamp.**

**IT IS SO ORDERED.**

**HON. MARY E. CHRISTOPHER  
DISTRICT COURT JUDGE**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above document was filed electronically on the date stamped on the order, with a copy sent via U.S. Mail to any *pro se* party, providing notice to the following:

Charles Leroy Freeman III, #0043826  
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\_\_\_\_\_  
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