

United States Court of Federal Claims

No. 10-793C

August 1, 2011

UNPUBLISHED

ANTHONY R. HICKS,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Anthony R. Hicks, pro se.

Kenneth David Woodrow, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for defendant.

OPINION *and* ORDER

Block, Judge.

Pro se plaintiff, Anthony R. Hicks, asserts various claims against the North Myrtle Beach Police Department in South Carolina, as well as against Walt Floyd, a North Myrtle Beach detective. Plaintiff also seeks relief from a decision by the Clerk of the U.S. Supreme Court. Before the court is defendant's motion to dismiss the case for lack of jurisdiction, pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims ("RCFC"). As explained below, the court concludes that it lacks jurisdiction over plaintiff's claims and grants defendant's motion.

I. BACKGROUND

On February 26, 1999, plaintiff filed suit against Detective Floyd of the South Carolina, North Myrtle Beach Police Department in the Supreme Court of that state pursuant to the court's original jurisdiction.¹ *See* Pl.'s Resp. to Def.'s Mot. to Dismiss ("Pl.'s Resp."), Ex. 2 at 40-b. The Supreme Court of South Carolina summarily dismissed that suit (along with six others) "because no extraordinary reason exist[ed] to entertain them in th[at] [c]ourt's original jurisdiction." Order of Dismissal at 2, *Hicks v. Floyd*, No. 9910343 (S.C. Mar. 4, 1999) ("*Hicks I*").

Ten years later, plaintiff filed a petition for writ of certiorari with the U.S. Supreme Court. *See* Pl.'s Resp., Ex. 1 at 5. Through a letter dated June 24, 2009, the Clerk of the

¹ The South Carolina Constitution grants that state's Supreme Court the discretion to exercise original jurisdiction over all suits except suits in equity. S.C. Const. art. V, § 5; *see Key v. Currie*, 406 S.E.2d 356, 357 (S.C. 1991).

Supreme Court returned plaintiff's petition as untimely. *Id.* (citing, *inter alia*, Sup. Ct. R. 13.1, which requires that a petition for writ of certiorari be filed within 90 days after the entry of judgment by a state court of last resort).

Plaintiff then filed suit in this court on November 16, 2010. Compl. at 1. Plaintiff's complaint consists of photocopied pages from his returned petition for writ of certiorari in *Hicks I*, along with copies of various submissions that plaintiff made to the U.S. Department of Justice regarding the same case. *See* Compl. Essentially, plaintiff seeks relief in this court on the same claims asserted in *Hicks I*.

In particular, plaintiff seeks compensation in the amount of seventeen million dollars for injuries allegedly incurred during a physical altercation with Detective Floyd on September 29, 1996. *See* Pl.'s Resp., Ex. 2 at 5, 36. Plaintiff asserts that Detective Floyd, and later the North Myrtle Beach Police Department, committed a litany of torts against him—including assault, battery, false imprisonment, false arrest, abuse of process, malicious prosecution, and libel. *Id.* at 36. Plaintiff further alleges that Detective Floyd fired one round from his service pistol during the fight in question. *Id.* at 5–6. Plaintiff charges that this was attempted murder by Detective Floyd; for that, plaintiff seeks an additional twenty-eight million dollars in punitive damages. *Id.* at 36 (citing 18 U.S.C. § 1113).

Finally, plaintiff asserts that the U.S. Supreme Court “illegally dismissed his [petition for] writ of certiorari.” Pl.'s Resp. at 7. In particular, plaintiff asserts that the rejection of his petition violated Rule 15(c) of the Federal Rules of Civil Procedure (“FRCP”).² *Id.*, Ex. 1 at 1. For this alleged violation, plaintiff seeks fifteen million dollars in damages, along with an additional 1.8 million dollars for an unspecified tort claim against the U.S. Supreme Court. Pl.'s Resp. at 3; *see* Pl.'s Sur-Reply at 6; Compl. at 2.

II. DISCUSSION

It is well settled that it is plaintiff, as the party seeking to invoke the court's jurisdiction, who bears the burden of establishing the same. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936). To be sure, in considering defendant's motion to dismiss, the court must accept the truth of plaintiff's factual allegations and must construe those allegations in plaintiff's favor. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). And, in recognition of plaintiff's *pro se* status, the court affords plaintiff particular leniency in construing his claims for relief. *See id.* (citing *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). That leniency, however, cannot overlook a jurisdictional defect in plaintiff's complaint. *See Henke v. United States*, 60 F.3d 795, 799 (Fed. Cir. 1995) (“The fact that [a plaintiff] act[s] *pro se* in the drafting of his complaint may explain its ambiguities, but it does not excuse its failures, if such there be.”).

In turn, any such jurisdictional defect must be assessed in light of the court's limited jurisdictional grant under the Tucker Act, which encompasses only claims “against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for

² FRCP 15(c) sets forth the conditions when a plaintiff's “amendment to a pleading” made during the trial-level proceeding “relates back to the date of the original pleading.” *See generally* Advisory Committee Notes on 1966 and 1991 Amendments to FRCP 15.

liquidated or unliquidated damages in cases not sounding in tort.” 28 U.S.C. § 1491(a)(1). As explained below, several limits on that jurisdictional grant dictate dismissal of this case.

First, only the United States is a proper defendant in the Court of Federal Claims. *United States v. Sherwood*, 312 U.S. 584, 588 (1941). Thus, the court has no jurisdiction over suits against private parties, or against municipal, county, or state agencies. *See id.*; *Moore v. Public Defenders Office*, 76 Fed. Cl. 617, 620 (2007); *Stephenson v. United States*, 58 Fed. Cl. 186, 190 (2003). Second, the “plain language of the Tucker Act excludes from the Court of Federal Claims’ jurisdiction claims sounding in tort.” *Rick’s Mushroom Serv., Inc. v. United States*, 521 F.3d 1338, 1343 (Fed. Cir. 2008) (citing 28 U.S.C. § 1491(a)(1)). Accordingly, plaintiff’s tort claims against the North Myrtle Beach Police Department, a municipal agency, and Detective Floyd, that agency’s employee, suffer a double jurisdictional defect and must be dismissed.

Likewise doubly defective is plaintiff’s request for punitive damages on his charge of attempted murder against Detective Floyd. This is because the Court of Federal Claims “has no jurisdiction to adjudicate any claims whatsoever under the federal criminal code.” *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994); *accord Pikulin v. United States*, 97 Fed. Cl. 71, 74 (2011). Moreover, it “is well-established that this [c]ourt lacks authority to grant punitive damages.” *Greene v. United States*, 65 Fed. Cl. 375, 379 (2005) (citing *Garner v. United States*, 230 Ct. Cl. 941, 943 (1982)).

Finally, the court has no jurisdiction to review the decisions of other courts or their clerks—let alone decisions by the nation’s highest court or its clerk. *See Joshua*, 17 F.3d at 380 (holding that the Court of Federal Claims lacks jurisdiction to review the decisions of federal district courts or their clerks); *United States v. Edwards*, 13 F.3d 291, 294 (9th Cir. 1993) (explaining that “the decisions of the United States Supreme Court [] are binding on all courts inferior to our nation’s highest court”), *overruled on other grounds*, 514 U.S. 1093 (1995). Accordingly, plaintiff’s challenge to the U.S. Supreme Court’s purported “illegal[] dismiss[al]” of his petition for writ of certiorari in *Hicks I* must also be dismissed.³

III. CONCLUSION

For the foregoing reasons, defendant’s MOTION TO DISMISS the complaint for lack of jurisdiction is GRANTED. The Clerk is directed to take the necessary steps to dismiss this matter.

IT IS SO ORDERED.

Victor J. Wolski
Judge,
for Judge Lawrence J. Block

³ It is perhaps worth noting that the U.S. Supreme Court’s “[r]eview on a writ of certiorari is not a matter of right, but of judicial discretion,” Sup. Ct. R. 10, and the Court’s “Clerk has authority to reject any submitted filing that does not comply with [the Court’s] Rules,” Sup. Ct. R. 1.