

In the United States Court of Federal Claims

No. 11-249

Filed: June 16, 2011

NOT FOR PUBLICATION

ROBERT EARL WASHINGTON,

Plaintiff, *pro se*.

v.

THE UNITED STATES,

Defendant.

MEMORANDUM OPINION AND FINAL ORDER

BRADEN, Judge.

I. RELEVANT FACTS AND PROCEDURAL HISTORY.

On April 14, 2011, Robert Earl Washington (“Plaintiff”) filed a Complaint (“Compl.”) at the United States Court of Federal Claims, together with two exhibits (“Pl. Ex. 1-2”), alleging claims against unidentified judges, attorneys, and officers of the Bexar County jail in Texas where Plaintiff is incarcerated.¹ Compl. ¶ 1. The April 14, 2011 Complaint also alleges that San Antonio city policy deprived him of the constitutional right to a fair hearing.² Compl. ¶¶ 2, 4.

¹ Specifically, the April 14, 2011 Complaint alleges violations of TEX. PENAL CODE ANN. § 38.02(b) (West 2011) (failing to provide identification to a peace officer); TEX. PENAL CODE ANN. § 22.11 (West 2011) (“Harassment by Persons in Certain Correctional Facilities; Harassment of Public Servant”); and TEX. PENAL CODE ANN. § 21.02 (West 2011) (“Continuous Sexual Abuse of Young Child or Children”). In addition, the April 14, 2011 Complaint cites two statutes the court was unable to verify: “justice code 21.27” and “7.42 V.T.C.A.” Compl. ¶ 1.

² In support, Plaintiff cites the 1st, 6th, 7th, 8th, 10th, 11th, and 14th Amendments to the United States Constitution and a number of cases: *City of W. Covina v. Perkins*, 523 U.S. 1105 (1998) (granting motion of sixty-seven cities, counties, and towns in California for leave to file

Attached to the April 14, 2011 Complaint are two Dismissal Orders from the United States District Court for the Western District of Texas, one signed by United States District Judge Orlando Garcia, dated February 11, 2011, the other signed by United States District Judge Xavier Rodriguez, dated April 6, 2011. Pl. Ex. 1-2.

II. DISCUSSION.

A. Jurisdiction.

The Tucker Act authorizes the United States Court of Federal Claims “to render judgment upon any claim 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 liquidated or unliquidated damages in cases not sounding in tort.” 28 U.S.C. § 1491(a)(1) (2006). The Tucker Act, however, is “a jurisdictional statute; it

brief as *amici curiae* and granting petition for writ of *certiorari* from the United States Court of Appeals for the Ninth Circuit); *Breithaupt v. Abram*, 352 U.S. 432 (1957) (affirming denial of habeas corpus petition); *Hooven & Allison Co. v. Evatt*, 324 U.S. 652 (1945) (reversing the denial of an application for review and redetermination of an assessment of property taxes due); *Coleman v. Miller*, 307 U.S. 433 (1939) (affirming denial of writ of *mandamus* regarding a decision by the Supreme Court of Kansas related to the proposed Child Labor Amendment); *Chelentis v. Luckenbach S.S. Co.*, 247 U.S. 372 (1918) (affirming judgment for defendant relating to injuries suffered by plaintiff while employed as a fireman on defendant’s steamship); *United States v. Reisinger*, 128 U.S. 398 (1888) (holding that section 13 of the Revised Statutes allowed for prosecution after a statute’s repeal for violations occurring prior to repeal); *United States v. Ambrose*, 108 U.S. 336 (1883) (answering certified questions related to a clerk’s perjury in the affirmative); *Pennoyer v. Neff*, 95 U.S. 714 (1877) (holding that for a determination of personal liability to be valid, the defendant must be brought within the court’s jurisdiction by service of process within the state or his voluntary appearance); *Perkins v. City of W. Covina*, 113 F.3d 1004 (9th Cir. 1997) (holding that individual city and county officials are entitled to qualified immunity for § 1983 violations related to a murder investigation); *Picking v. Pa. R.R. Co.*, 151 F.2d 240 (3d Cir. 1945) (reversing dismissal of complaint against railroad company to recover damages for conspiracy to deprive plaintiffs of their liberty); *Majestic Secs. Corp. v. Comm’r of Internal Revenue*, 120 F.2d 12 (8th Cir. 1941) (affirming decision of United States Board of Tax Appeals regarding a deficiency in the tax imposed by the Commissioner of Internal Revenue); *Bufalino v. Irvine*, 103 F.2d 830 (10th Cir. 1939) (affirming order denying petition for writ of habeas corpus); *Gable v. United States*, 84 F.2d 929 (7th Cir. 1936) (reversing conviction of nine counts related to stolen government bonds); *Cal. Prune & Apricot Growers’ Ass’n v. Catz Am. Co.*, 60 F.2d 788 (9th Cir. 1932) (reversing an order directing parties to proceed to arbitration); *Klever v. Seawall*, 65 F. 393 (6th Cir. 1895) (affirming judgment as to the recovery of land claimed and mesne profits in a partition action); *McConnor v. Kaufman*, 49 F.Supp. 738 (S.D.N.Y. 1943) (dismissing copyright claims for ‘Tiny Tim,’ ‘Florence Nightingale,’ and ‘Lord Fauntleroy’); *Nat’l Union Fire Ins. Co. v. Chesapeake & O. Ry. Co.*, 4 F.Supp. 25 (E.D. Ky. 1933) (denying motion to remand to state court). Compl. ¶¶ 2-7.

does not create any substantive right enforceable against the United States for money damages. . . . [T]he Act merely confers jurisdiction upon it whenever the substantive right exists.” *United States v. Testan*, 424 U.S. 392, 398 (1976).

Therefore, in order to pursue a substantive right within the jurisdictional reach of the Tucker Act, a plaintiff must identify and plead an independent contractual relationship, constitutional provision, federal statute, or executive agency regulation that provides a substantive right to money damages. *See Todd v. United States*, 386 F.3d 1091, 1094 (Fed. Cir. 2004) (“[J]urisdiction under the Tucker Act requires the litigant to identify a substantive right for money damages against the United States separate from the Tucker Act itself.”); *see also Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (“The Tucker Act itself does not create a substantive cause of action; in order to come within the jurisdictional reach and the waiver of the Tucker Act, a plaintiff must identify a separate source of substantive law that creates the right to money damages.”).

“Subject-matter jurisdiction may be challenged at any time by the parties or by the court *sua sponte*.” *Folden v. United States*, 379 F.3d 1344, 1354 (Fed. Cir. 2004), *reh'g and reh'g en banc denied* (Fed. Cir. 2004), *cert. denied*, 545 U.S. 1127 (2005). “In fact, a court has a duty to inquire into its jurisdiction to hear and decide a case.” *Special Devices, Inc. v. OEA, Inc.*, 269 F.3d 1340, 1342 (Fed. Cir. 2001); *see also View Eng'g, Inc. v. Robotic Vision Sys., Inc.*, 115 F.3d 962, 963 (Fed. Cir. 1997) (“[C]ourts must always look to their jurisdiction, whether the parties raise the issue or not.”). “Determination of jurisdiction starts with the complaint, which must be well-pleaded in that it must state the necessary elements of the plaintiff’s claim, independent of any defense that may be interposed.” *Holley v. United States*, 124 F.3d 1462, 1465 (Fed. Cir. 1997). “Conclusory allegations of law and unwarranted inferences of fact do not suffice to support a claim.” *Bradley v. Chiron Corp.*, 136 F.3d 1317, 1322 (Fed. Cir. 1998). When deciding a case based on a lack of subject-matter jurisdiction, this court “must accept all well-pleaded factual allegations as true and draw all reasonable inferences in [the plaintiff’s] favor.” *Boyle v. United States*, 200 F.3d 1369, 1372 (Fed. Cir. 2000) (citation omitted); *see also Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (“[F]or the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true[.]” (citation omitted)).

B. *Pro Se* Litigants.

The pleadings of a *pro se* plaintiff are held to a less stringent standard than those of litigants represented by counsel. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (holding that *pro se* complaints, “however inartfully pleaded,” are held to “less stringent standards than formal pleadings drafted by lawyers”) (internal quotation and citation omitted). Indeed, it has been the tradition of this court to examine the record “to see if [a *pro se*] plaintiff has a cause of action somewhere displayed.” *Ruderer v. United States*, 412 F.2d 1285, 1292 (Ct. Cl. 1969). Nevertheless, while the court may excuse ambiguities in a *pro se* Plaintiff’s complaint, the court “does not excuse [a complaint’s] failures.” *Henke v. United States*, 60 F.3d 795, 799 (Fed. Cir. 1995).

C. The Court's Resolution.

The April 14, 2011 Complaint alleges violations by unidentified judges, attorneys, and Bexar County jail officers of TEX. PENAL CODE ANN. §§ 38.02(b), 22.11, and 21.02 (West 2011). Compl. ¶ 1. In addition, the April 14, 2011 Complaint alleges violations of justice code § 21.27 and 7.42 V.T.C.A. that the court was unable to identify. *Id.* Because the April 14, 2011 Complaint states a claim, if any, against the City of San Antonio, Bexar County, and the State of Texas, and not against the United States, the United States Court of Federal Claims does not have jurisdiction to adjudicate these claims. *See* 28 U.S.C. § 1491(a)(1) (2006) (“The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against *the United States*[.]” (emphasis added)); *see also Moore v. Pub. Defenders Office*, 76 Fed. Cl. 617, 620 (2007) (“When a plaintiff’s complaint names private parties, or local, county or state agencies, rather than federal agencies, this court has no jurisdiction to hear those allegations.”). To the extent that the April 14, 2011 Complaint alleges violations of the Texas Penal Code, the court also lacks jurisdiction to adjudicate such claims. *See Hufford v. United States*, 87 Fed. Cl. 696, 700 (2009) (“[The United States Court of Federal Claims] lacks jurisdiction to adjudicate criminal claims.”).

In addition, the April 14, 2011 Complaint alleges that San Antonio city policy deprived Plaintiff of his constitutional rights. Compl. ¶¶ 2, 4. Although Congress authorized the United States Court of Federal Claims to adjudicate claims “founded . . . upon the Constitution,” 28 U.S.C. § 1491(a)(1), the scope of this jurisdiction is limited only to claims arising under Constitutional provisions that mandate the payment of money. *See LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed Cir. 1995) (The Tucker Act confers jurisdiction on the United States Court of Federal Claims “when the constitutional provision, statute, or regulation in question expressly creates a substantive right enforceable against the federal government for money damages.”). The April 14, 2011 Complaint, however, fails to identify a money-mandating provision of the Constitution.

The April 14, 2011 Complaint also attaches two Dismissal Orders from the United States District Court for the Western District of Texas. Pl. Ex. 1-2. The United States Court of Federal Claims does not have jurisdiction to review final judgments of the United States District Courts. *See Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994) (“[T]he Court of Federal Claims does not have jurisdiction to review the decisions of district courts.”).

III. CONCLUSION.

For the reasons stated herein, the Clerk of the Court for the United States Court of Federal Claims is directed to dismiss the April 14, 2011 Complaint, pursuant to RCFC 12(b)(1).

IT IS SO ORDERED.

SUSAN G. BRADEN
Judge