



## DISCUSSION

### I. Standard of Review

*Pro se* plaintiffs are entitled to a liberal construction of their pleadings. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (requiring that allegations contained in a *pro se* complaint be held to “less stringent standards than formal pleadings drafted by lawyers”). However, “[t]here is no duty on the part of the trial court to create a claim which [the plaintiff] has not spelled out in his pleading.” *Scogin v. United States*, 33 Fed. Cl. 285, 293 (1995) (quoting *Clark v. Nat’l Travelers Life Ins. Co.*, 518 F.2d 1167, 1169 (6th Cir. 1994)). Here, the court has thoroughly examined the complaint and plaintiff’s response to defendant’s motion to dismiss in an effort to ascertain all of plaintiff’s claims.

In rendering a decision on a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims (RCFC), this court must presume all undisputed factual allegations to be true and construe all reasonable inferences in favor of the plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *abrogated on other grounds by Harlow v. Fitzgerald*, 457 U.S. 800, 814-15 (1982); *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 747 (Fed. Cir. 1988). However, plaintiff bears the burden of establishing subject matter jurisdiction, *Alder Terrace, Inc. v. United States*, 161 F.3d 1372, 1377 (Fed. Cir. 1998) (citing *McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936)), and must do so by a preponderance of the evidence, *Reynolds*, 846 F.2d at 748. If jurisdiction is found to be lacking, this court must dismiss the action. RCFC 12(h)(3).

### II. Analysis

The complaint in the subject matter presented two claims. The first is that Mr. Sumbry was arrested without a warrant. The second is that he was improperly imprisoned following a “void judgment,” which allegedly lacked force due to procedural and jurisdictional flaws. In plaintiff’s response to defendant’s motion to dismiss, these claims are somewhat augmented by claims that Mr. Sumbry was falsely imprisoned, sentenced without the benefit of counsel, and placed in double jeopardy.

As defendant notes, none of plaintiff's claims fall within this court's jurisdiction. Insofar as these matters are claims of false arrest, false imprisonment or other torts, this court has no jurisdiction over claims which sound in tort. 28 U.S.C. § 1491(a)(1) (2000). If Mr. Sumbry is alleging that agents of the United States deprived him of his civil rights, this court lacks jurisdiction over such claims, as well. *Marlin v. United States*, 63 Fed. Cl. 475, 476 (2005) (citations omitted). Finally, if plaintiff is, in essence, attempting to void or vacate the judgment of a trial court which has put him in prison, such an action must be undertaken in that trial court, or the appellate court that reviews decisions of that trial court and not this court, since the Court of Federal Claims lacks jurisdiction over such matters. *Stell v. United States*, 213 Ct. Cl. 695, 697 (1976); *Durrant v. United States*, 50 Ct. Cl. 1, 11 (1914).

### CONCLUSION

Plaintiff's motion to proceed *in forma pauperis*, filed May 19, 2006, is **GRANTED**. Defendant's Motion for Summary Dismissal of Pro Se Complaint, filed July 6, 2006, is **GRANTED**. The Clerk shall **DISMISS** the complaint in the subject matter, without prejudice, and **ENTER** judgment for defendant. No costs.

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LYNN J. BUSH  
JUDGE