

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
No. 06-64C

(Filed: June 14, 2006)

VIRGIL AVERY WITHERS, *pro se*,)
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 Plaintiff,)
)
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 v.)
)
 UNITED STATES,)
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 Defendant.)
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ORDER

In this action, plaintiff, Virgil Avery Withers, seeks to overturn his conviction for two bank robberies committed in North Carolina. Mr. Withers filed a suit in this court on January 10, 2006, seeking release from prison and damages of at least \$10,283,477,661 for wrongs in relation to his prosecution, conviction, and subsequent incarceration for bank robbery. Compl. at 1-5. The government has moved to dismiss the complaint pursuant to Rule 12(b)(1) of the Rules of the Court of Federal Claims (“RCFC”). For the reasons stated below, the government’s motion is granted.

BACKGROUND

Mr. Withers was arrested on April 20, 2000 and charged with bank robbery. He confessed to robbing two banks in North Carolina on April 14 and 17, 2000, and was subsequently convicted and incarcerated. Mr. Withers avers that the convicting court, the District Court for the Eastern District of North Carolina, lacked the jurisdiction necessary to convict him of bank robbery because he avers that he is a “sovereign citizen” in his own right. Compl. at 1. Furthermore, Mr. Withers asserts that federal government officials violated their oaths of office to uphold the United States Constitution; that individuals connected to his case violated the False Claims Act, 31 U.S.C. § 3729; that the manager of a bank he robbed committed fraud; and that individuals connected with his case committed procedural errors.

Compl. at 2-5. Finally, Mr. Withers seeks compensatory damages for wrongful imprisonment against his former attorney. *Id.* at 3-4.¹

JURISDICTION

As plaintiff, Mr. Withers bears the burden of establishing the court's subject matter jurisdiction over his claims by a preponderance of the evidence. *Reynolds v. Army and Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988); *see McNutt v. General Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936). In determining its subject matter jurisdiction, a court must accept as true all undisputed facts asserted in the plaintiff's complaint and "draw all reasonable inferences in favor of the plaintiff." *Goel v. United States*, 62 Fed. Cl. 804, 806 (2004) (citing *Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995)); *see also Hamlet v. United States*, 873 F.2d 1414, 1415-16 (Fed. Cir. 1989).

Pro se claimants are held to a less stringent standard in pleading than that which is applied to formal pleadings prepared by counsel. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Nonetheless, subject matter jurisdiction must be distinctly and affirmatively pled in the complaint. *See Norton v. Larney*, 266 U.S. 511, 515-16 (1925); *Henke*, 60 F.3d at 799.

The Tucker Act constitutes explicit consent for the filing in this court of "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). Alone, however, the Tucker Act is insufficient to confer subject matter jurisdiction. The plaintiff must also identify a substantive right that is enforceable against the United States for money damages. *United States v. Mitchell*, 463 U.S. 206, 217-18 (1983); *see United States v. Testan*, 424 U.S. 392, 398 (1976).

Mr. Withers does not identify or cite a money-mandating Constitutional provision, federal statute, or federal regulation under which this court may exercise jurisdiction and award damages to him. *See* Compl. at 1-5. Furthermore, Mr. Withers alleges that individuals, not the United States, committed fraud. *Id.* This court lacks jurisdiction to hear claims against individuals, *see Brown v. United States*, 105 F.3d 621, 624 (Fed. Cir. 1997); *Shewfelt v. United States*, 104 F.3d 1333, 1337-38 (Fed. Cir. 1997) (holding that state officials' actions cannot be attributed to the United States), except with relation to setoffs and counterclaims made by the government. *See* 28 U.S.C. §§ 1503, 2508; *Cherry Cotton Mills v. United States*, 327 U.S. 536, 539 (1946). Finally, this court is not the proper forum for attacking the actions of a federal district court in a criminal proceeding. "The Court of Federal Claims 'does not have jurisdiction to review the

¹On April 5, 2006, Mr. Withers was granted leave to file a supplement to his complaint, and the court in its analysis has considered both his original complaint and the supplement.

decisions of district courts.”” *Vereda Ltda. v. United States*, 271 F.3d 1367, 1375 (Fed. Cir. 2001) (quoting *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994)).

CONCLUSION

Therefore, the government’s motion to dismiss is GRANTED, and this case shall be dismissed for lack of subject matter jurisdiction. The Clerk shall enter judgment accordingly.² No costs.

It is so ORDERED.

Charles F. Lettow
Judge

²Mr. Withers has also filed a Motion for Summary Judgment on Default and Request for Default Judgment. He requests a default judgment pursuant to RCFC 55 on the ground that the government failed to file a reply to Mr. Withers’s opposition to the government’s motion to dismiss. This motion is DENIED. By filing a motion to dismiss, the government has acted to “plead or otherwise defend” against Mr. Withers’s claims, RCFC 55(a), and there is no default.