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In the United States Court of Federal Claims **U.S. COURT OF FEDERAL CLAIMS**

No. 10-837C

(Filed: July 12, 2011)

NOT FOR PUBLICATION

_____)
JEREMY BRUNSON,)
)
Plaintiff,)
)
v.)
)
THE UNITED STATES,)
)
Defendant.)
_____)

Jeremy Brunson, Raiford, Florida, plaintiff *pro se*.

Devin A. Wolak, Trial Attorney, Deborah A. Bynum, Assistant Director, Jeanne E. Davidson, Director, Commercial Litigation Branch, Civil Division, Tony West, Assistant Attorney General, United States Department of Justice, Washington, D.C., for defendant.

OPINION AND ORDER

GEORGE W. MILLER, Judge

Plaintiff, proceeding *pro se*, filed a complaint in this court on November 22, 2010 (docket entry 1). Defendant filed a motion to dismiss plaintiff’s complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Rules of the Court of Federal Claims (“RCFC”) and for failure to state a claim upon which relief can be granted pursuant to RCFC 12(b)(6) (docket entry 3, Feb. 4, 2011) (“Def.’s Mot.”). Plaintiff subsequently sent a letter to defendant’s counsel, who then forwarded it to the Clerk of the Court. The Court accepted the letter as plaintiff’s response to defendant’s motion to dismiss (docket entry 5, Mar. 7, 2011) (“Pl.’s Resp.”). For the reasons set forth below, the Court **GRANTS** defendant’s motion to dismiss for lack of subject matter jurisdiction.

I. Background

Plaintiff is a prisoner at the Florida State Prison in Raiford, Florida.¹ Compl. at 1. Plaintiff alleges a number of acts committed against him during his imprisonment, including that:

¹ The Raiford prison is managed by the Florida Department of Corrections (“FDOC”), the state governmental agency that operates the Florida state prison system.

(1) mailroom employees tampered with his mail by removing two books of postage stamps sent to him by his family, Compl. at 1; (2) prison guards threatened him with bodily harm and death, Compl. at 3, and two inmates were killed shortly after prison guards called them from their cells, Pl.'s Resp. at 1; (3) prison guards allowed contraband, specifically, drugs and phones, into the Raiford prison, Compl. at 3; and (4) medical staff "placed bugs on [him]," Pl.'s Resp. at 1, committed "ill-mannered actions" against him, Compl. at 3, and refused to treat him, Pl.'s Resp. at 1.

Plaintiff requests that the Court compel the FDOC to transfer him to another correctional facility in Santa Rosa, Florida and place him under the protection of the federal government. Compl. at 3. Plaintiff also requests that the Court investigate the alleged mail tampering and imprison the offending employees. Compl. at 1. Defendant argues that plaintiff's claims are beyond the Court's jurisdiction and that the Court must dismiss the complaint. Def.'s Mot. at 1-3.

II. Discussion

A. *Standard of Review for Motion to Dismiss for Lack of Subject Matter Jurisdiction*

Pro se plaintiffs are entitled to liberal construction of their pleadings. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). However, *pro se* plaintiffs, like all plaintiffs, must meet jurisdictional requirements before their cases can be heard. *Kelley v. Sec'y, U.S. Dep't of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987); *Biddulph v. United States*, 74 Fed. Cl. 765, 767 (2006). If plaintiffs fail to establish that the court possesses subject matter jurisdiction over their claims, then the court must dismiss the complaint. RCFC 12(h)(3).²

Pursuant to the Tucker Act, 28 U.S.C. § 1491(a)(1), the Court has jurisdiction over "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." Because the Tucker Act does not create a substantive right enforceable against the United States, a claimant must identify another source of law that creates a substantive right that is "reasonably amenable to the reading that it mandates a right of recovery in damages." *Doe v. United States*, 463 F.3d 1314, 1324 (Fed. Cir. 2006) (quoting *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 472-73 (2003)).

B. *The Court Lacks Subject Matter Jurisdiction Over Plaintiff's Claims*

The Raiford prison employees are state employees or agents, and the Court does not have jurisdiction to grant relief against them. *See United States v. Sherwood*, 312 U.S. 584, 588 (1941) ("[I]f the relief sought is against others than the United States the suit as to them must be ignored as beyond the jurisdiction of the court . . ." (citations omitted)). Therefore, plaintiff's

² For the purpose of determining subject matter jurisdiction, the Court will assume that all undisputed facts alleged in the complaint are true and draw all reasonable inferences in plaintiff's favor. *See Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

claims that the state employees at Raiford prison tampered with his mail, threatened his life, and permitted contraband into the prison are not within the Court's jurisdiction and must be dismissed. The medical employees at Raiford are also state employees, and therefore plaintiff's claims that they placed bugs on him, committed ill-mannered actions against him, threatened him with bodily harm, and refused to treat him are not within the Court's jurisdiction and must also be dismissed.

Additionally, several of plaintiff's claims are tort claims over which the Court does not have jurisdiction. *See* 28 U.S.C. § 1491(a)(1) (stating that the Court of Federal Claims has jurisdiction over claims for money damages against the United States "*not sounding in tort*" (emphasis added)); *Brown v. United States*, 105 F.3d 621, 623 (Fed. Cir. 1997) ("The Court of Federal Claims . . . lacks jurisdiction over tort actions against the United States."). Plaintiff's claims that prison employees have threatened his life and that medical personnel placed bugs on him, committed ill-mannered actions against him, threatened him with bodily harm, and refused to treat him are tort claims not within the Court's jurisdiction and must be dismissed.³

Even if the Court had jurisdiction over plaintiff's claims, the Court could not grant the relief requested by plaintiff. First, the Court lacks authority to order a prison transfer because such a remedy would be equitable in nature, and with certain exceptions not relevant here, the Court lacks the authority to award equitable relief. *See Brown*, 105 F.3d at 624 ("The Tucker Act does not provide independent jurisdiction over such claims for equitable relief."); *Bullock v. United States*, 82 Fed. Cl. 176, 178 (2008) (denying plaintiff's request for prison transfer on jurisdictional grounds). Second, the Court lacks jurisdiction to hear criminal cases, and thus the Court could not imprison the offending employees. *See Joshua v. United States*, 17 F.3d 378, 379 (Fed. Cir. 1994); *McCullough v. United States*, 76 Fed. Cl. 1, 4 (2006) (ruling that the court lacked jurisdiction to consider plaintiff's criminal claims). Furthermore, because plaintiff does not seek relief under a "statute, regulation, or constitutional provision that . . . can fairly be interpreted as mandating compensation by the Federal Government," plaintiff's claims must be dismissed. *See Jan's Helicopter Serv., Inc. v. Fed. Aviation Admin.*, 525 F.3d 1299, 1307 (Fed. Cir. 2008) (internal quotation marks omitted).⁴

³ To the extent that plaintiff asserts claims under the Eighth and Fourteenth Amendments for cruel and unusual punishment or for inadequate medical care, those claims are also not within the Court's jurisdiction because those provisions are not money-mandating. *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995) (dismissing plaintiff's claims alleging violation of the Due Process Clause of the Fourteenth Amendment because it is not money-mandating); *Hurt v. United States*, 64 Fed. Cl. 88, 89 (2005), *aff'd*, 134 F. App'x 446 (Fed. Cir. June 2, 2005) (dismissing claims based on the Eighth Amendment for lack of jurisdiction); *see also Phillips v. United States*, No. 07-140C, 2007 WL 5172419, at *2-3 (Fed. Cl. May 24, 2007) (dismissing claims based on the Eighth Amendment for inadequate medical care and increased violence in a state correctional facility for lack of jurisdiction).

⁴ In its motion to dismiss, the Government requests that plaintiff's complaint be dismissed for failure to state a claim upon which relief can be granted. *See* RCFC 12(b)(6). Because the Court does not have subject matter jurisdiction to rule on the merits of plaintiff's claims, the Court finds it unnecessary to address defendant's 12(b)(6) motion. *See Fisher v.*

Accordingly, all of plaintiff's claims are dismissed for lack of subject matter jurisdiction.

C. Transfer to a District Court Is Not in the Interest of Justice

When the Court lacks jurisdiction over a particular action, it has the authority to transfer that action to a court "in which the action . . . could have been brought at the time it was filed," but only if such transfer "is in the interest of justice." 28 U.S.C. § 1631. Although not requested by plaintiff, the Court may transfer plaintiff's case *sua sponte* to a federal district court if it is in the interest of justice to do so. *Tex. Peanut Farmers v. United States*, 409 F.3d 1370, 1375 (Fed. Cir. 2005) (citing *Phillips v. Seiter*, 173 F.3d 609, 610 (7th Cir. 1995)). However, it is not in the interest of justice to transfer claims that are "unlikely to be meritorious in another court of the United States." *See Phu Mang Phang v. United States*, 87 Fed. Cl. 321, 330 (2009).

In this case, plaintiff has alleged tort claims and possibly civil rights violations against Florida state prison employees. However, plaintiff's allegations relating to those claims are to a substantial degree vague and conclusory. The Court therefore concludes that it is not in the interest of justice to transfer plaintiff's claims *sua sponte* to an appropriate federal district court. *See id.*⁵

CONCLUSION

For the reasons stated above, the Court **GRANTS** defendant's motion to dismiss for lack of subject matter jurisdiction pursuant to RCFC 12(b)(1). The Clerk is directed to enter judgment dismissing plaintiff's complaint without prejudice.

Plaintiff may appeal the Court's judgment to the Court of Appeals for the Federal Circuit within sixty days of the date of the entry of judgment. Failure to file a timely notice of appeal will waive the right of appeal, and the Court's order will be final.

IT IS SO ORDERED.


GEORGE W. MILLER
Judge

United States, 402 F.3d 1167, 1173 (Fed. Cir. 2005) (en banc in relevant part) ("If the court's conclusion is that the source as alleged and pleaded is not money-mandating, the court . . . shall dismiss the cause for lack of jurisdiction . . ."); *see also Greenlee County, Ariz. v. United States*, 487 F.3d 871, 876 (Fed. Cir. 2007) (holding that if a claim is not based upon a money-mandating provision of law, then "the Court of Federal Claims lacks jurisdiction, and the dismissal should be for lack of subject matter jurisdiction").

⁵ Depending on the relevant statutes of limitations, plaintiff may be able to pursue a new action setting forth his claims against the state of Florida, its agents, or its employees in an appropriate federal district court.