

In the United States Court of Federal Claims

No. 11-436C
(Filed: February 27, 2012)
(Not for Publication)

JAMES T. SMITH,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

*
*
*
*
*
*
*
*
*
*
*
*

ORDER OF DISMISSAL

WILLIAMS, Judge.

Plaintiff James T. Smith, currently incarcerated at United States Penitentiary Hazelton, West Virginia, seeks damages for false imprisonment following his 1997 conviction for bank robbery by intimidation. This matter comes before the Court on Defendant's motion to dismiss Plaintiff's complaint for lack of subject-matter jurisdiction pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims ("RCFC"). Because the Court lacks jurisdiction to entertain any of Plaintiff's claims, Defendant's motion to dismiss is granted.

Background

The United States charged Plaintiff with bank robbery by intimidation for events occurring on October 21, 1996. See United States v. Smith, 131 F.3d 685, 686 (7th Cir. 1997). At his trial in the United States District Court for the Western District of Wisconsin, Plaintiff admitted the facts surrounding the bank robbery but contended that his actions did not constitute intimidation. The jury found Plaintiff guilty, and he was sentenced to 210 months in prison. The United States Court of Appeals for the Seventh Circuit affirmed Plaintiff's conviction.

Plaintiff filed numerous requests for post-conviction relief in the United States District Court for the Western District of Wisconsin. See United States v. Smith, No. 96–CR–0076–C–01, 2003 WL 23208936, at *1 (W.D. Wis. July 1, 2003). After denying two such requests, the District Court advised Plaintiff that “if he was challenging his conviction, he would have to obtain certification of his motion by a panel of the United States Court of Appeals for the Seventh Circuit before [the District Court] would have jurisdiction to entertain it.” Id. Plaintiff ignored the District Court’s order and filed further challenges to his conviction without obtaining permission from the Court of Appeals. In 2003, the District Court found that Plaintiff’s “persistence in filing motions without obtaining the required permission from the court of appeals is nothing more than sport.” Id. The District Court thus ordered its clerk’s office to direct any further filing by Plaintiff to chambers, and stated that if “the document includes a challenge to [Plaintiff’s] conviction or sentence and is not accompanied by an order of the . . . Seventh Circuit permitting the filing, then [the court would] place the document in the file of [Plaintiff’s] case and make no response to it.” Id. at *2. Despite this warning, Plaintiff continued to file documents seeking post-conviction relief from the District Court, which in turn rejected all such requests. See United States v. Smith, No. 96-CR-0076-C-01, 2005 WL 366962, at *1 (W.D. Wis. February 14, 2005) (describing Plaintiff’s filing as “nothing more than a continuation of his game-playing” and holding that “his appeal is not taken in good faith and that for this reason, he is not entitled to proceed in forma pauperis on appeal”); Smith v. Sherrod, No. 09-717-GPM, 2010 WL 1838248, at *1-2 (S.D. Ill. May 6, 2010) (holding that the United States District Court for the Southern District of Illinois had no jurisdiction to consider Plaintiff’s collateral attack on his sentence).

In the instant complaint, Plaintiff alleges that the United States has imprisoned him in violation of 28 U.S.C. § 2007 (2006) and the Thirteenth Amendment to the United States Constitution, and seeks damages under 28 U.S.C. § 1495 (2006). Plaintiff further alleges that the United States has engaged in an unlawful conspiracy to promulgate the federal sentencing guidelines. Defendant has moved to dismiss all claims for lack of jurisdiction.

Discussion

When deciding a motion to dismiss under RCFC 12(b)(1), the Court assumes all factual allegations to be true and construes “all reasonable inferences in plaintiff’s favor.” Hall v. United States, 74 Fed. Cl. 391, 393 (2006) (quoting Henke v. United States, 60 F.3d 795, 797 (Fed. Cir. 1995)). Plaintiff bears the burden of establishing subject-matter jurisdiction by a preponderance of the evidence before the Court proceeds to the merits of the action. Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988); see also Naskar v. United States, 82 Fed. Cl. 319, 320 (2008); Fullard v. United States, 78 Fed. Cl. 294, 299 (2007); BearingPoint, Inc. v. United States, 77 Fed. Cl. 189, 193 (2007). “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” RCFC 12(h)(3); see also Tindle v. United States, 56 Fed. Cl. 337, 341 (2003).

This Court Lacks Jurisdiction to Hear Plaintiff’s Claim for False Imprisonment

Plaintiff seeks damages for false imprisonment. Given the facts alleged in Plaintiff’s complaint, the Court lacks jurisdiction to entertain Plaintiff’s claim.

The Court of Federal Claims may exercise jurisdiction “to render judgment upon any claim for damages by any person unjustly convicted of an offense against the United States and imprisoned.” 28 U.S.C. § 1495. Plaintiff must meet the prerequisites of a suit brought under 28 U.S.C. § 1495:

- (a) Any person suing under [28 U.S.C. § 1495] must allege and prove that:
 - (1) His conviction has been reversed or set aside on the ground that he is not guilty of the offense of which he was convicted, or on new trial or rehearing he was found not guilty of such offense, as appears from the record or certificate of the court setting aside or reversing such conviction, or that he has been pardoned upon the stated ground of innocence and unjust conviction and
 - (2) He did not commit any of the acts charged or his acts, deeds, or omissions in connection with such charge constituted no offense against the United States, or any State, Territory or the District of Columbia, and he did not by misconduct or neglect cause or bring about his own prosecution.
- (b) Proof of the requisite facts shall be by a certificate of the court or pardon wherein such facts are alleged to appear, and other evidence thereof shall not be received.

28 U.S.C. § 2513 (2006). Here, Plaintiff has not alleged that his conviction has been set aside, reversed, or that he has been pardoned, and has not produced the required certificate of a court showing as much. Because Plaintiff has not alleged the facts necessary for the Court to exercise jurisdiction under 28 U.S.C. § 1495, the Court must dismiss Plaintiff’s unjust imprisonment claim.

Nor do Plaintiff’s Thirteenth Amendment and 28 U.S.C. § 2007 claims fall within the Court’s jurisdiction. This Court may, pursuant to the Tucker Act, assert jurisdiction over 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 liquidated or unliquidated damages in cases not sounding in tort.” 28 U.S.C. § 1491(a)(1) (2006). However, a plaintiff must identify a substantive right to compensation independent of the Tucker Act in order to invoke the Court’s jurisdiction. *In re United States*, 463 F.3d 1328, 1333 (Fed. Cir. 2006) (“[A] Tucker Act plaintiff must assert a claim under a separate money-mandating constitutional provision, statute, or regulation, the violation of which supports a claim for damages against the United States”) (citing *Todd v. United States*, 386 F.3d 1091, 1094 (Fed. Cir. 2004)).

The Thirteenth Amendment to the United States Constitution states that “[N]either slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their

jurisdiction,” and that “Congress shall have power to enforce this article by appropriate legislation.” U.S. Const. amend. XIII. The Court does not have jurisdiction over claims based on the Thirteenth Amendment because the Thirteenth Amendment does not mandate the payment of money damages. See Pleasant-Bey v. United States, 99 Fed. Cl. 363, 367 (2011); Johnson v. United States, 79 Fed. Cl. 769, 774 (2007). This Court likewise has no jurisdiction over claims under 28 U.S.C. § 2007. Section 2007 does not mandate the payment of money by the government.¹

To the extent Plaintiff’s complaint is another attempt to challenge his criminal conviction, this Court has no jurisdiction to adjudicate criminal cases. Joshua v. United States, 17 F.3d 378, 379 (Fed. Cir. 1994); Hufford v. United States, 87 Fed. Cl. 696, 702 (2009). For this reason, the Court also lacks jurisdiction to adjudicate Plaintiff’s claim that “Congress . . . [has] knowingly and intentionally engaged in a RICO [c]onspiracy with the . . . Department of Justice and [the] United States Sentencing Commission to promulgate and ratify the . . . [Federal United States Sentencing Guidelines].” Compl. 2. See Hufford, 87 Fed. Cl. at 702 (“This court has no jurisdiction over RICO claims, because RICO is a criminal statute.”) (citing Dumont v. United States, 85 Fed. Cl. 425, 430 (2009)).

Plaintiff Does Not Raise a Contract Claim Within the Court’s Jurisdiction

Plaintiff indicates that his complaint is “based upon” the “Registered Consensual Contract [MN UCC FILING OFFICE FILE NO: 20112418662] Number JTS-091710-EH.” Compl. 1. The Tucker Act confers jurisdiction on this Court for claims “against the United States founded . . . upon any express or implied contract with the United States.” 28 U.S.C. § 1491(a)(1). However, nowhere in his complaint does Plaintiff explain the subject matter of the purported contract, nor does he identify the person or agency that entered into the contract on behalf of the United States. Indeed, the contract on which Plaintiff relies (based on the corresponding filing number) seems to be documents, filed with the State of Minnesota Secretary of State, in which Plaintiff appears to challenge his conviction. Compl. 1, Ex. 2 at 14-20. No federal official executed any of the documents, nor do these documents demonstrate the requisite contractual elements of offer, acceptance and consideration. See Trauma Serv. Group v. United

¹ The text of 28 U.S.C. § 2007 states:

(a) A person shall not be imprisoned for debt on a writ of execution or other process issued from a court of the United States in any State wherein imprisonment for debt has been abolished. All modifications, conditions, and restrictions upon such imprisonment provided by State law shall apply to any writ of execution or process issued from a court of the United States in accordance with the procedure applicable in such State.

(b) Any person arrested or imprisoned in any State on a writ of execution or other process issued from any court of the United States in a civil action shall have the same jail privileges and be governed by the same regulations as persons confined in like cases on process issued from the courts of such State. The same requirements governing discharge as are applicable in such State shall apply. Any proceedings for discharge shall be conducted before a United States magistrate judge for the judicial district wherein the defendant is held.

States, 104 F.3d 1321, 1325 (Fed. Cir. 1997) (“The general requirements for a binding contract with the United States are identical for both express and implied contracts. The party alleging a contract must show a mutual intent to contract, including an offer, an acceptance, and consideration.”) (citations omitted). Because neither the allegations in, nor the documents included with, Plaintiff’s complaint evidence a contract with Defendant, Plaintiff’s claim does not fall within this Court’s jurisdiction.

This Court Lacks Jurisdiction to Entertain Plaintiff’s Fraud Claim

Plaintiff alleges in his complaint that Defendant “created an unjust conviction and imprisonment via fraud” Compl. 2. However, this Court does not possess jurisdiction to consider Plaintiff’s claim of fraud. Claims of fraud are tort claims, and the Tucker Act expressly denies this Court jurisdiction to hear claims “sounding in tort.” 28 U.S.C. § 1491(a)(1); Brown v. United States, 105 F.3d 621, 623 (Fed. Cir. 1997); Englert v. United States, 38 Fed. Cl. 366, 373 (1997) (“This court has no jurisdiction over allegations by plaintiff which may be characterized as based upon tort, including any claims by plaintiff of fraud or breach of duty or negligence.”).

Conclusion

Defendant’s motion to dismiss is **GRANTED**. The Clerk of the Court is directed to dismiss Plaintiff’s complaint for lack of jurisdiction.


MARY ELLEN COSTER WILLIAMS
Judge