

In the United States Court of Federal Claims

NOT FOR PUBLICATION

No. 04-1685C

(Filed May 31, 2005)

ALVIN DARRELL SMITH,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

MEMORANDUM OPINION AND ORDER

The plaintiff, Alvin Darrell Smith, is a prisoner of the District of Columbia Department of Corrections. On November 18, 2004, the plaintiff filed a complaint in this Court alleging, among other things, that he is entitled to be paroled from prison and that as result of a wrongful delay in granting him parole he is entitled to money damages. The defendant United States (“Government”) has moved to dismiss the complaint under Rule 12(b)(1) of the Rules of the Court of Federal Claims (“RCFC”) for want of subject matter jurisdiction. For the following reasons the Government’s motion to dismiss is **GRANTED**.

In ruling on a motion to dismiss under RCFC 12(b)(1), the Court is generally “obligated to assume all factual allegations to be true and to draw all reasonable inferences in the plaintiff’s favor.” *Hecke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995) (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236-37 (1974)). The “[p]laintiff bears that burden of showing jurisdiction by a preponderance of the evidence.” *Taylor v. United States*, 303 F.3d 1357, 1359 (Fed. Cir. 2002); *see also Thomson v. Gaskill*, 315 U.S. 442, 446 (1942). Although this Court accords a *pro se* plaintiff leniency in presenting his case, the plaintiff’s *pro se* status does not render him immune from the requirement that he plead facts upon which a valid claim can rest. *Paalan v. United States*, 57 Fed. Cl. 15, 16 (2003); *see also Hains v. Kerner*, 404 U.S. 519, 520 (1972).

The Court of Federal Claims, like other federal courts, has its jurisdiction determined by Congress. *See Aldinger v. Howard*, 427 U.S. 1, 15 (1976) (“federal courts, as opposed to state trial courts of general jurisdiction, are courts of limited jurisdiction marked out by Congress”). Our Court is a special court that primarily considers claims based on financial transactions with

the federal government, voluntary or involuntary (contracts, benefits, taxes, and takings). This Court's jurisdiction is "marked out" primarily in the Tucker Act, which states in pertinent part:

The United States Court of Federal Claims shall have jurisdiction 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) (2000).¹ The Tucker Act, however, 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. *Mitchell v. United States*, 463 U.S. 206, 216-17 (1983); *United States v. Testan*, 424 U.S. 392, 398 (1976). As the Federal Circuit has noted the "absence of a money-mandating source [is] fatal to the court's jurisdiction under the Tucker Act." *Fisher v. United States*, 402 F.3d 1167, 1173 (Fed. Cir. 2005). The source can be a contract with the government, or a law that specifically entitles one to the payment of money.

There can be no doubt that the plaintiff seeks money damages in his complaint; the plaintiff's complaint clearly asserts that he believes he is entitled to money damages as compensation for his being wrongfully denied parole. The plaintiff alleges that he should have either already been paroled from prison or that he should have been brought before the parole board at a date earlier than when he was brought before the board. Compl. at 8-9, 11. As a result, the plaintiff requests that this Court order that he be paroled, and he seeks money damages in the form of lost wages he would have earned had he been released at the proper time, as well as punitive damages. Compl. at 10, 15. In addition to the plaintiff's money damages claims, the plaintiff requests that this Court review and resolve numerous cases that are or were pending in the District of Columbia Superior Court, with the District of Columbia Corporation Counsel, and in the United States District Courts for the District of Columbia and Middle District of Florida. Compl. at 10, 15. None of the plaintiff's claims fall within the Court's jurisdiction.

Although the plaintiff has sought compensatory and punitive² money damages, the basis for these damages is not a money-mandating provision of the Constitution, a money-mandating federal statute or regulation, or an express or implied contract with the United States. In an

¹ The Court does not have jurisdiction over this case under 28 U.S.C. § 1495. The plaintiff does not allege that he was "unjustly convicted," and he was not convicted of "an offense against the United States." See 28 U.S.C. § 1495 (2000).

² It is well established that this Court lacks authority to grant punitive damages. See, e.g., *Garner v. United States*, 230 Ct. Cl. 941, 943 (1982); *Vincin v. United States*, 468 F.2d 930, 932 (Ct. Cl. 1972). Moreover, the United States has not waived sovereign immunity with regard to punitive damages. 28 U.S.C. § 2674.

attempt to establish this Court's jurisdiction the plaintiff has cited a number of constitutional provisions, statutes, and regulations; however, "[n]ot every claim invoking the Constitution, a federal statute, or a regulation is cognizable under the Tucker Act." *Mitchell*, 463 U.S. at 216. For instance, the plaintiff has cited the Eighth Amendment, which, although it speaks of excessive fines and bail, cannot fairly be read to mandate monetary compensation for its violation. *See, e.g., Fireman v. United States*, 49 Fed. Cl. 290, 292 (2001). The plaintiff has also identified two repealed federal parole statutes; leaving aside whether these statutes apply to the plaintiff, the statutes set forth when and under what conditions an inmate may be paroled -- they do not mandate money. *See* 18 U.S.C. §§ 4205, 4206 (repealed 1984). Further, the plaintiff's complaint identifies provisions in title 28 dealing with judicial misconduct; besides not mandating money, claims of judicial misconduct must be filed in the court of appeals for the circuit in which the judicial misconduct was alleged to have occurred. *See* 28 U.S.C. §§ 351–355 (2000). Additionally, the plaintiff has identified 42 U.S.C. § 1983 in support of this Court's jurisdiction; however, the Court does not have jurisdiction over civil rights claims brought pursuant to section 1983, as jurisdiction over civil rights claims resides exclusively in the district courts. *See, e.g., Marlin v. United States*, 63 Fed. Cl. 475, 476 (2005); *Wildman v. United States*, 28 Fed. Cl. 494, 495 (1993). In short, none of the provisions identified by the plaintiff support a money damages claim in this Court. Even if laws were violated, they are not laws that promise to pay plaintiff money, and thus are not within this Court's power to address.

Moreover, this Court is without authority to review the decisions of D.C. Superior Court, Corporation Counsel, or the district courts. *See, e.g., Allustiarte v. United States*, 256 F.3d 1349, 1352 (Fed. Cir. 2001). Furthermore, to the extent that any of the claims the plaintiff asserts against the United States or against a person acting under the authority of the United States are pending in another court, this Court is without jurisdiction over those claims. 28 U.S.C. § 1500 (2000). Accordingly, this Court is without jurisdiction over the plaintiff's claims.

For the foregoing reasons the Government's motion to dismiss is **GRANTED**. The Clerk is directed to close the case.

IT IS SO ORDERED.

VICTOR J. WOLSKI
Judge