

In the United States Court of Federal Claims

No. 10-181C
Filed July 2, 2010
NOT FOR PUBLICATION

JEFF FORT,)
)
)
Plaintiff,)
)
)
v.)
)
)
THE UNITED STATES,)
)
Defendant.)

Jeff Fort, Florence, Colorado, appearing *pro se*.

Jeffrey D. Klingman, Trial Attorney, Kirk T. Manhardt, 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 is currently incarcerated in the United States Penitentiary Administrative Maximum Facility (“ADX”) in Florence, Colorado. He has sued in this court alleging, among other things, unjust conviction and wrongful imprisonment as a result of conspiracy, fraud, and other misconduct by numerous federal employees and agents. Defendant has moved to dismiss plaintiff’s complaint for lack of subject matter jurisdiction or, in the alternative, for failure to state a claim upon which relief can be granted. Plaintiff filed a motion for leave to proceed *in forma pauperis*, which is **GRANTED** for purposes of considering plaintiff’s complaint and defendant’s motion to dismiss. For the reasons stated below, defendant’s motion to dismiss for lack of subject matter jurisdiction is **GRANTED**.

I. Background

Plaintiff Jeff Fort, proceeding *pro se*, filed a complaint in this court on March 25, 2010, seeking declaratory judgment, damages, and injunctive relief. Compl. at 22-23 (docket entry 1, Mar. 25, 2010). Plaintiff also moved for a preliminary injunction. Motion for Preliminary Injunction (docket entry 5, Mar. 25, 2010) (“Preliminary Injunction Mot.”).

According to the facts as found by the federal district and appellate courts, in the 1980s, plaintiff was the leader of the organization now known as El Rukns, formerly the Black P. Stone Nation.¹ *United States v. McAnderson*, 914 F.2d 934, 939 (7th Cir. 1990). The organization headquarters, known as the “Mosque,” were located at 3947 South Drexel Boulevard in Chicago, Illinois. *Id.* In 1984, plaintiff was incarcerated at the Federal Correctional Institute in Bastrop, Texas, but continued to act as the leader of El Rukns through telephone conversations to the Chicago headquarters. *Id.* Through use of a complex code, plaintiff was able to evade federal authorities who were monitoring his telephone conversations. *Id.*

While incarcerated in Bastrop, plaintiff developed a plan by which El Rukns would offer to perform terrorist activities within the United States in return for a \$1 million annual payment from the Libyan government. *Id.* Plaintiff and other members of El Rukns discussed destroying a government building, planting a bomb, blowing up an airplane, killing a Milwaukee alderman, or committing “a killing here and a killing there.” *Id.* Plaintiff also planned to acquire a handheld light anti-tank weapon. *Id.* at 940.

Plaintiff and other members of El Rukns were charged in a 50-count indictment in the United States District Court for the Northern District of Illinois for their participation in the conspiracy. *Id.* The indictment included charges of conspiracy to commit terrorist acts in violation of 18 U.S.C. § 371, interstate travel and use of the telephone in furtherance of the conspiracy, and other charges involving firearms and explosives. *Id.* In a trial before Judge Charles R. Norgle beginning on October 7, 1987, plaintiff was found guilty and sentenced to an additional 80 years in prison. *Id.* On September 28, 1990, the Seventh Circuit affirmed plaintiff’s conviction and sentence. *Id.* at 939.

In the present case, plaintiff alleges that he has been unjustly convicted and wrongfully imprisoned because he “is not guilty” and “did not commit any of the acts” for which he has been convicted. Compl. at 11. Plaintiff alleges that various prison and government officials as well as members of the Organized Crime Drug Enforcement Task Force (“OCDETF”) were engaged in a “scheme to defraud” that, among other things, denied plaintiff “a reasonable duty of care” and led to a public “loss of confidence” in numerous governmental institutions. Compl. at 2, 13-21. Plaintiff further alleges that he is being deprived of his rights under the First, Fourth, Fifth,

¹ The Court may take judicial notice of the facts recounted in the Seventh Circuit’s opinion. *Rodriguez v. Sec’y of Health & Human Servs.*, 91 Fed. Cl. 453, 460 (2010); *see also* *McTernan v. City of York, Pa.*, 577 F.3d 521, 526 (3d Cir. 2009).

Ninth, Tenth, and Fourteenth Amendments. Compl. at 10, 12. Plaintiff avers that the seizure by the Government of the building and land located at 3947 South Drexel Boulevard in Chicago constitutes a taking “for public use without just compensation.” Preliminary Injunction Mot. at 3. Plaintiff seeks damages and injunctive relief pursuant to 28 U.S.C. §§ 1495 and 2513(a) and Federal Rule of Civil Procedure 65(a).² Compl. at 1.

Defendant argues that this court lacks jurisdiction over plaintiff’s case because “Mr. Fort has not provided a certificate of innocence from the trial court, which is a jurisdictional prerequisite for obtaining relief for unjust conviction and imprisonment.” Motion to Dismiss Pursuant to Rules 12(b)(1) and (6) at 1-2 (docket entry 8, May 24, 2010) (“Def.’s Mot.”). In addition, defendant asserts that this court lacks jurisdiction because plaintiff’s claims are barred by the applicable statute of limitations. *Id.* at 7. In the alternative, defendant argues that this court should dismiss plaintiff’s complaint for failure to state a claim because plaintiff failed to present a certificate of innocence. *Id.*

II. Standard of Review

A. Motion to Dismiss for Lack of Subject Matter Jurisdiction

Plaintiff must set forth a jurisdictional basis for his claims. Rule 8(a)(1) of the Rules of the Court of Federal Claims (“RCFC”). In determining whether it possesses jurisdiction, the court looks first at the complaint, which “must be well-pleaded in that it must state the necessary elements of the plaintiff’s claim, independent of any defense that may be interposed.” *Holley v. United States*, 124 F.3d 1462, 1465 (Fed. Cir. 1997). When the court decides a motion to dismiss for lack of subject matter jurisdiction, the allegations of the complaint must be construed in the manner most favorable to the plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). The complaints of *pro se* plaintiffs are held to “less stringent standards than formal pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Despite the leeway afforded *pro se* plaintiffs, they must still meet jurisdictional requirements. *Kelley v. Sec’y, United States Dep’t of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987); *Biddulph v. United States*, 74 Fed. Cl. 765, 767 (2006). When defendant challenges plaintiff’s jurisdictional allegations, plaintiff bears the burden of establishing subject matter jurisdiction by a preponderance of the evidence. *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988). If plaintiff fails to establish that the court possesses subject matter jurisdiction, then the Court must dismiss the complaint under RCFC 12(h)(3).

² Mr. Fort requests a jury trial in this case. Compl. at 23. But there are no jury trials in the Court of Federal Claims—all cases are decided by the judge as the trier of fact. *Persyn v. United States*, 34 Fed. Cl. 187, 194 (1995).

B. *Motion to Dismiss for Failure to State a Claim*

A complaint must be dismissed under RCFC 12(b)(6) for failure to state a claim upon which relief can be granted “when the facts asserted by the claimant do not entitle him to a legal remedy.” *Lindsay v. United States*, 295 F.3d 1252, 1257 (Fed. Cir. 2002). When the court considers a motion to dismiss for failure to state a claim pursuant to RCFC 12(b)(6), the allegations of the complaint must be accepted as true and should be construed favorably to the pleader. *Scheuer*, 416 U.S. at 236. Plaintiff need not provide detailed facts upon which the claims are based, but there must be enough facts to state “a claim to relief that is plausible on its face.” *Mastrolia v. United States*, 91 Fed. Cl. 369, 376 (2010) (quoting *Cary v. United States*, 552 F.3d 1373, 1376 (Fed. Cir. 2009)). However, if the complaint’s allegations do not plausibly entitle plaintiff to relief even if true, dismissal of the complaint is appropriate under RCFC 12(b)(6). *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 558 (2007).

III. Discussion

A. *The Court Does Not Possess Jurisdiction over Plaintiff’s Unjust Imprisonment Claim*

Congress has vested the Court of Federal Claims with “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. § 1495.³ However, 28 U.S.C. § 1495 must be read in conjunction with 28 U.S.C. § 2513, which details the procedure for pursuing a claim for damages under § 1495. *Wood v. United States*, 91 Fed. Cl. 569, 578 (2009); *Phang v. United States*, 87 Fed. Cl. 321, 330 (2009). Section 2513(a) requires anyone suing for damages for unjust imprisonment to 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

³ Congress intended to “partially right an irreparable wrong done to a United States citizen who was wrongfully imprisoned.” *Humphrey v. United States*, 52 Fed. Cl. 593, 597 (2002); see also *United States v. Graham*, No. 09-6013, ___ F.3d ___, 2010 WL 2473159, at *6 (4th Cir. June 16, 2010). Congress did not, however, seek to indemnify every imprisoned individual whose conviction was set aside, but rather sought to limit “the availability of this remedy to those who are truly innocent.” *Humphrey*, 52 Fed. Cl. at 597-98.

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.

The statute mandates that “[p]roof 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(b). Thus, in order for the Court of Federal Claims to have jurisdiction over plaintiff’s claim of unjust conviction and imprisonment, plaintiff must provide the court with a certificate of innocence (“COI”) from the federal district court or a pardon by the President of the United States.⁴ *Wood*, 91 Fed. Cl. at 577; *Zakiya v. United States*, 79 Fed. Cl. 231, 235 (2007); *see also Lott v. United States*, 11 Cl. Ct. 852, 853 (1987) (holding that “the court’s jurisdiction to entertain a claim for money damages for unjust conviction arises only *after* the challenged conviction has been reversed, on grounds of innocence, by a court of competent jurisdiction or by Presidential pardon”).

The grant of jurisdiction in 28 U.S.C. §§ 1495 and 2513, as with all statutes that waive sovereign immunity, must be strictly construed. *Zakiya*, 79 Fed. Cl. at 234; *see also M. Maropakis Carpentry, Inc. v. United States*, No. 09-5024, ___ F.3d ___, 2010 WL 2403337, at *5 (Fed. Cir. June 17, 2010). This court cannot overturn convictions or review in detail the facts surrounding a conviction or imprisonment. *Zakiya*, 79 Fed. Cl. at 234-35; *Humphrey*, 52 Fed. Cl. at 596 (“This Court has no authority to re-examine in detail the facts surrounding a conviction or imprisonment; such matters are within the sole discretion of the appropriate (usually district) court or executive officer with the authority to reverse, set aside, or pardon a claimant’s original conviction.”).

Plaintiff does not provide this court with a COI or allege that he has been pardoned by the President of the United States. Indeed, plaintiff’s conviction was affirmed and he is, in the eyes of the law, guilty of the charged offenses. As a result, plaintiff fails to satisfy the requirements of 28 U.S.C. §§ 1495 and 2513, and thus this court lacks jurisdiction over his claim of unjust conviction and imprisonment. *See Lucas v. United States*, 228 Ct. Cl. 862, 863 (1981) (“Where,

⁴ There has been some difference of opinion regarding whether a COI is a jurisdictional prerequisite or a matter of proof on the merits. The greater weight of authority concludes that receipt of a COI is jurisdictional. *See Wood*, 91 Fed. Cl. at 576-77 (conducting a detailed analysis of the precedents of the Court of Claims and the Federal Circuit and concluding that the receipt of a COI is jurisdictional). Moreover, only a federal district court can grant the COI, and that court has broad discretion in deciding whether to issue it. *Humphrey*, 52 Fed. Cl. at 597; *see also Graham*, 2010 WL 2473159, at *6 (“[T]he decision to deny a certificate of innocence is committed to the sound discretion of the district court.”) (quotation and citations omitted). A petitioner has the burden of proof in showing that he is entitled to such a certificate. *Humphrey*, 52 Fed. Cl. at 597. A judgment following the reversal of plaintiff’s conviction or a court’s unpublished memorandum opinion reversing a conviction does not constitute a COI if such documents do not meet the requirements of 28 U.S.C. § 2513. *Wood*, 91 Fed. Cl. at 578-79.

as here, suit is brought and no showing is made that plaintiff has obtained the requisite certificate of innocence by the court, or pardon, this court will not entertain the claim.”).

B. The Court Does Not Possess Subject Matter Jurisdiction over Plaintiff's Remaining Claims

1. Plaintiff's Claims of Government Misconduct

The judges of this court may also adjudicate “claim[s] 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) (“the Tucker Act”).

This court possesses “jurisdiction over suits against the United States, not against individual federal officials.” *Brown v. United States*, 105 F.3d 621, 624 (Fed. Cir. 1997). When plaintiff’s complaint names private parties, the court lacks jurisdiction to hear those allegations. *Shalhoub v. United States*, 75 Fed. Cl. 584, 585 (2007). Plaintiff’s complaint names individual federal officials, rather than the United States, as defendants. Compl. at 2. Thus, the court would be justified in dismissing plaintiff’s complaint for that reason alone. The Court will nonetheless construe the complaint liberally as one against the United States and analyze plaintiff’s allegations notwithstanding this pleading flaw. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

Claims alleging acts of malfeasance or fraud by individual government officials are tort-based allegations over which this court lacks jurisdiction. *See* 28 U.S.C. § 1491(a)(1); *see also Brown*, 105 F.3d at 623; *Campbell v. United States*, 38 Fed. Cl. 524, 531 (1997). This court cannot hear claims of government mismanagement or misconduct. *Marshall v. United States*, No. 09-733, 2009 WL 4884457, at *3 (Fed. Cl. Dec. 11, 2009). The district courts have exclusive jurisdiction to hear such tort claims. 28 U.S.C. § 1346(b)(1); *Campbell*, 38 Fed. Cl. at 531. Moreover, this court lacks jurisdiction to hear criminal cases, and thus this court cannot adjudicate plaintiff’s allegations of criminal behavior on the part of federal employees. *Brown v. United States*, 88 Fed. Cl. 322, 328 (2009).

Plaintiff alleges that numerous government officials, including members of the Federal Bureau of Prisons, Federal Bureau of Investigation, and OCDETF, were engaged in a “scheme to defraud.” Compl. at 2, 13-21. Plaintiff also avers that the alleged corruption of these government officials led to a public “loss of confidence” in the OCDETF program, “the Federal Prison System,” and the federal court system. *Id.* at 15-17, 20. Plaintiff’s claims of fraud and government malfeasance sound in tort and are therefore not within the jurisdiction of this court. In addition, to the extent that plaintiff alleges criminal behavior on the part of federal employees, this court lacks the jurisdiction to adjudicate those criminal claims. Accordingly, the Court lacks jurisdiction over these claims.

2. Plaintiff's Claims of Constitutional Violations

Plaintiff also alleges that he is being “deprived of his right to the freedom of speech, peaceful assembly, and right to be heard,” which he alleges are guaranteed by the First, Fourth, Fifth, Ninth, Tenth, and Fourteenth Amendments. Compl. at 9-10, 12. However, merely alleging violations of constitutional provisions is not sufficient for a plaintiff to satisfy the jurisdictional requirements of the Court of Federal Claims. The Tucker Act is a jurisdictional statute that does not create any substantive right enforceable against the United States for money damages. *United States v. Testan*, 424 U.S. 392, 398 (1976). In order to come within the court’s jurisdiction, “a plaintiff must identify a separate source of substantive law that creates the right to money damages.” *Greenlee County, Ariz. v. United States*, 487 F.3d 871, 875 (Fed. Cir. 2007) (quoting *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (en banc)). This separate source of substantive law must be a “money-mandating constitutional provision, statute or regulation that has been violated, or an express or implied contract with the United States.” *Loveladies Harbor, Inc. v. United States*, 27 F.3d 1545, 1554 (Fed. Cir. 1994). A constitutional provision, statute, or regulation is money-mandating if the particular provision of law relied upon expressly or impliedly grants the claimant a right to be paid a certain sum. *Eastport Steamship Corp. v. United States*, 372 F.2d 1002, 1007 (Ct. Cl. 1967). The independent source of substantive law must “fairly be interpreted as mandating compensation by the Federal Government for the damages sustained.” *United States v. Mitchell*, 463 U.S. 206, 217 (1983) (quoting *Testan*, 424 U.S. at 400).

Plaintiff’s complaint refers to a number of constitutional provisions, such as the First, Fourth, Fifth, Ninth, Tenth, and Fourteenth Amendments, but “[n]ot every claim invoking the Constitution [or] a federal statute . . . is cognizable” in this court. *Mitchell*, 463 U.S. at 216. Other than the takings clause of the Fifth Amendment, the other Amendments to the Constitution do not mandate monetary compensation if violated and such claims are thus beyond the jurisdiction of this court. *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995) (stating that the Fourteenth Amendment’s Due Process and Equal Protection Clauses do not mandate payment of money by the Government); *Zhao v. United States*, 91 Fed. Cl. 95, 99 n.4 (2010) (“[T]he Ninth Amendment has not been judged to be a source of individual rights for purposes of stating a claim.”); *Young v. United States*, 88 Fed. Cl. 283, 289 (2009); see also *Ogden v. United States*, 61 Fed. Cl. 44, 47 (2004) (holding that the First, Fourth, Ninth and Tenth Amendments do not mandate monetary compensation). Any violations of plaintiff’s rights under the First, Fourth, Ninth, Tenth, and Fourteenth Amendments would not mandate the payment of money by the United States, so claims based upon those amendments are not within the jurisdictional purview of this court.

3. Plaintiff's Taking Claim

Plaintiff’s allegations under the Takings Clause of the Fifth Amendment suffer from a different jurisdictional defect. The Takings Clause of the Fifth Amendment is money-mandating. *Nance v. United States*, 92 Fed. Cl. 41, 46 (2010). If plaintiff has a “nonfrivolous takings claim founded upon the Fifth Amendment, jurisdiction under the Tucker Act is proper.” *Moden v.*

United States, 404 F.3d 1335, 1341 (Fed. Cir. 2005). But pursuant to 28 U.S.C. § 2501, “[e]very claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.” This statute of limitations is a jurisdictional requirement for suit in this court. *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 134 (2008), *aff’g* 457 F.3d 1345 (Fed. Cir. 2006). A taking claim under the Fifth Amendment accrues “when all the events have occurred which fix the liability of the Government and entitle the claimant to institute an action.” *John R. Sand & Gravel Co.*, 457 F.3d at 1355-56 (quoting *Goodrich v. United States*, 434 F.3d 1329, 1333 (Fed. Cir. 2006)). Additionally, the claim accrues only when “plaintiff knew or should have known of the existence of the events fixing the government’s liability.” *Id.* at 1356.

Plaintiff alleges that the “City of Chicago, took title to the Plaintiff[’]s property under a Federal forfeiture by default decree issued in the Northern District of Illinois, Eastern Division” and that “[t]he Federal government’s interest in the Plaintiff[’]s religious property was declared a determination of ‘law enforcement’s gift to the community.’” Preliminary Injunction Mot. at 3. Plaintiff asserts that the taking of the property located at 3947 South Drexel Boulevard in Chicago “for public use without just compensation to the owner is in clear violation of the Constitution of the United States of America.” *Id.*; *see also* Compl. at 10. But even assuming that plaintiff alleged an otherwise valid taking claim, the claim is time-barred. Plaintiff alleges that “the Complaint is not time barred since damages accrued in or about February, 2001, upon the final disposition of the Government’s so-called El Rukn Trials.”⁵ Compl. at 11. Plaintiff filed his complaint in this court on March 25, 2010, more than six years after he alleges his claim first accrued. Thus, plaintiff’s taking claim is barred by the statute of limitations and the court lacks jurisdiction over that claim.⁶

C. *The Court Cannot Grant Plaintiff’s Requests for Relief*

Because this court lacks jurisdiction over plaintiff’s claims, it cannot grant plaintiff any of the relief he requests, including declaratory or injunctive relief.⁷ Plaintiff also seeks

⁵ If, as plaintiff alleges, all of his claims accrued on or about February 2001, then *all* of his claims are time-barred. Compl. at 11.

⁶ Moreover, a forfeiture is not a taking. *See Acadia Tech., Inc. v. United States*, 458 F.3d 1327, 1331 (Fed. Cir. 2006) (“When property has been seized pursuant to the criminal laws or subjected to *in rem* forfeiture proceedings, such deprivations are not ‘takings’ for which the owner is entitled to compensation.”). Therefore, plaintiff’s “taking” claim should also be dismissed pursuant to RCFC 12(b)(6) for failure to state a claim upon which relief can be granted.

⁷ Furthermore, the Tucker Act does not, with certain exceptions not relevant here, give this court the ability to award declaratory or injunctive relief. *Clarke v. United States*, No. 10-283, 2010 WL 2143675, at *3 (Fed. Cl. May 24, 2010); *see also Brown*, 105 F.3d at 624 (holding that the Court of Federal Claims does not have general jurisdiction to award declaratory or

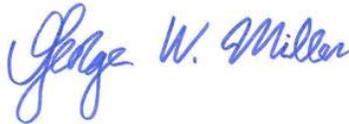
compensatory damages in the amount of \$100,000,000 and punitive damages in the amount of \$25,000. Compl. at 23. However, plaintiff's request for compensatory damages flows from his tort-based claims regarding the alleged fraud committed by members of OCDEF, which are outside the jurisdiction of this court. In addition, plaintiff's request for punitive damages is beyond the jurisdictional reach of this court. *Taylor v. United States*, No. 08-25, 2008 WL 1992132, at *5 (Fed. Cl. Mar. 5, 2008); *see also Greene v. United States*, 65 Fed. Cl. 375, 379 (2005) ("It is well-established that this Court lacks authority to grant punitive damages.").

CONCLUSION

For the reasons set forth above, defendant's motion to dismiss plaintiff's complaint for lack of subject matter jurisdiction pursuant to RCFC 12(b)(1) is **GRANTED**, and the Clerk is directed to enter judgment for defendant accordingly. Plaintiff's motion for preliminary injunction is also **DENIED**.

Plaintiff may appeal the Court's judgment to the Court of Appeals for the Federal Circuit within sixty (60) days of the date of entry of judgment. Failure to file a timely notice of appeal will waive the right to an appeal, and the Court's order will be final.

IT IS SO ORDERED.



GEORGE W. MILLER
Judge

injunctive relief).