

In the United States Court of Federal Claims

No. 11-357C

(Filed January 9, 2012)

NOT FOR PUBLICATION

ANTHONY P. WHITE,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

ORDER DISMISSING CASE

The Court has reviewed defendant's motion to dismiss this case for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims ("RCFC") and for failure to state a claim upon which relief can be granted pursuant to RCFC 12(b)(6). For the following reasons, defendant's motion to dismiss is **GRANTED**.

Plaintiff filed his complaint on June 6, 2011.¹ In 1993, plaintiff was indicted by the Grand Jury of Stark County, Ohio for the unlawful transportation, storage, and attempted disposal of hazardous waste. Compl. Ex. 1 at 13. Plaintiff was convicted and served sixty-two days in state prison. Compl. ¶ 24. In addition to the United States, plaintiff names as defendants his former defense counsel, the judge who presided over his trial, the deputy clerk of Stark County, and twenty-two unidentified individuals.

Plaintiff alleges a variety of claims related to his indictment, conviction, and incarceration. Plaintiff alleges, pursuant to the Federal Tort Claims Act, 28 U.S.C. § 1346(b), that the prosecutor handling his case forged the deputy county clerk's signature on the indictment papers, Compl. ¶¶ 12, 21, 30, and that the trial judge and plaintiff's former defense counsel conspired to suppress evidence and deny plaintiff a jury trial, *id.* ¶¶ 23, 28, all of which resulted in what plaintiff alleges was abuse of process and false imprisonment. *Id.* ¶¶ 8-9. In addition to his tort claims, plaintiff alleges that defendants violated his constitutional rights protected by the

¹ On July 19, 2011, the Court received plaintiff's motion to strike defendant's notice of appearance. Because plaintiff did not provide proof of service with this unusual and baseless submission, it was not accepted for filing.

First, Fourth, Sixth, and Tenth Amendments and the Due Process Clause of the Fifth Amendment. *Id.* ¶¶ 25-26, 31. Plaintiff seeks \$10,000,000 in damages. *Id.* at 13.

Under RCFC 12(b)(1), a complaint must be dismissed when it is shown that the Court lacks jurisdiction over the complaint's subject matter. When considering a motion to dismiss for lack of subject matter jurisdiction, the Court will normally accept as true all factual allegations made by the pleader and draw all reasonable inferences in a light most favorable to that party. *See Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *Pixton v. B&B Plastics, Inc.*, 291 F.3d 1324, 1326 (Fed. Cir. 2002) (requiring that on a motion to dismiss for lack of subject matter jurisdiction the Court views "the alleged facts in the complaint as true, and if the facts reveal any reasonable basis upon which the non-movant may prevail, dismissal is inappropriate").

While *pro se* plaintiffs' filings are to be liberally construed, *see Erickson v. Pardus*, 551 U.S. 89, 94 (2007), this lenient standard cannot prevent a case outside our jurisdiction from being dismissed. *See, e.g., Henke v. United States*, 60 F.3d 795, 799 (Fed.Cir.1995). Because the Tucker Act, 28 U.S.C. § 1491, does not create any substantive rights, a plaintiff must identify a separate source of law that creates a right to money damages for his claim to be within our jurisdiction. *Jan's Helicopter Serv., Inc. v. FAA*, 525 F.3d 1299, 1306 (Fed. Cir. 2008) (quoting *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (*en banc* in relevant part)). The test for determining whether a statute or regulation can support jurisdiction in our court is whether it can be fairly interpreted as mandating compensation. *See, e.g., United States v. White Mountain Apache Tribe*, 537 U.S. 465, 472-73 (2003); *United States v. Mitchell*, 463 U.S. 206, 216-17 (1983); *Fisher v. United States*, 402 F.3d 1167, 1173-74 (Fed. Cir. 2005); *Contreras v. United States*, 64 Fed. Cl. 583, 588-92 (2005).

Plaintiff's allegations do not fall within the Court's jurisdiction. As the government correctly points out in its motion, the Court does not have jurisdiction over alleged torts. *See* 28 U.S.C. § 1491(a)(1) (granting the Court 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*") (emphasis added). Tort actions against the United States or its agents cannot be brought in this Court. *Id.* Nor does the Court have jurisdiction over plaintiff's allegations of constitutional violations, because the provisions under which he brings his claims do not create a right to money damages for their violation and therefore cannot be the basis of subject-matter jurisdiction in this Court. *See, e.g., United States v. Connolly*, 716 F.2d 882, 886-87 (Fed. Cir. 1983) (First Amendment); *Brown v. United States*, 105 F.3d 621, 623-24 (Fed. Cir. 1997) (Fourth Amendment); *Tasby v. United States*, 91 Fed. Cl. 344, 346 (2010) (Fourth Amendment); *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995) (Due Process Clause of the Fifth Amendment);² *Milas v. United States*, 42 Fed. Cl. 704, 710 (1999) (Sixth Amendment); *Ogden v. United States*, 61 Fed. Cl. 44, 47 (2004) (Tenth Amendment). Moreover, as defendant points out, plaintiff's claims accrued by

² The Due Process Clause is money-mandating only when the theory of recovery is an illegal exaction. *See, e.g., Mallow v. United States*, 161 Ct. Cl. 446, 454 (1963); *McCoy v. United States*, Nos. 05-120L, 05-167L, 2005 WL 6124815, at *3 n.3 (Fed. Cl. June 29, 2005).

1994 at the latest and his complaint was filed on June 6, 2011, which is well beyond the six year statute of limitations for claims in this Court. *See* 28 U.S.C. § 2501.³

For these reasons, defendant's motion to dismiss the case for lack of jurisdiction, under RCFC 12(b)(1), is **GRANTED**. Plaintiff's unopposed motion for *in forma pauperis* status is also **GRANTED**. Plaintiff's case is dismissed without prejudice. The Clerk shall close the case.

IT IS SO ORDERED.

VICTOR J. WOLSKI
Judge

³ In any event, plaintiff's complaint does not even allege claims against the United States or its agents, but only against state and county officials and private individuals. (The judge who presided over plaintiff's criminal trial and who is named in the complaint now sits on the federal district court, but plaintiff is suing him for actions taken while serving as a state court judge in 1993. *See* Compl. ¶¶ 23, 28.) Claims may only be brought in our Court against the United States or its agents. *See* 28 U.S.C. § 1491(a)(1). Thus, even if the violations alleged were within our subject-matter jurisdiction, the complaint would fail to state a claim upon which relief can be granted and would have to be dismissed under RCFC 12(b)(6).