

# In The United States Court of Federal Claims

No. 07-524C

**This Opinion Will Not Be Published in the U.S. Court of Federal Claims Reporter Because It Does Not Add Significantly to the Body of Law.**

(Filed: July 7, 2010)

---

RICHARD JOSEPH FINLEY,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

---

## OPINION

---

### **ALLEGRA, Judge:**

Pending before the court, in this action for damages for unjust conviction and wrongful imprisonment, is defendant's motion to dismiss pursuant to RCFC 12(b)(1) and 12(b)(6). After having carefully considered the parties' filings, the court, for the reasons that follow, **GRANTS** defendant's motion.

### I.

On January 5, 2000, plaintiff, Richard J. Finley, was convicted in the United States District Court for the Eastern District of California (the district court), for making a false claim against the United States, attempting to interfere with the administration of the Internal Revenue Service, and two counts of bank fraud. He was sentenced to four years in prison. On appeal, his conviction was reversed and the case remanded for retrial. *See United States v. Finley*, 301 F.3d 1000 (9<sup>th</sup> Cir. 2002). Shortly after this decision, on September 5, 2002, he was released from custody. On the retrial, the court acquitted Finley of all charges.

On July 11, 2007, plaintiff filed a complaint in this court seeking \$6.6 million in damages, pursuant to 28 U.S.C. § 1495, for his unjust conviction and imprisonment. On September 12, 2007, this court stayed proceedings pending the outcome of proceedings in the district court in which plaintiff was seeking a certification that he was innocent as charged and that his prosecution did not result from his own misconduct or negligence – a document known as a

“certificate of innocence.” On June 26, 2008, the district court denied Finley’s request, finding that “the petitioner has not met his burden of proof and has not established that his conduct was innocent.” *Finley v. United States*, 2008 WL 2561594, at \*11 (E.D. Cal. June 26, 2008). That court added that “[u]nder the circumstances it would appear that Finley acted through neglect and he has not proven that he ‘did not by . . . neglect cause or bring about his own prosecution,’ as required by § 2513.” *Id.* at \*12. On July 6, 2009, the Ninth Circuit affirmed this ruling, *Finley v. United States*, 328 Fed. Appx. 480 (9<sup>th</sup> Cir. 2009), and on March 1, 2010, the Supreme Court denied certiorari, 130 S. Ct. 1718 (2010).

On May 14, 2010, defendant filed a motion to dismiss for lack of jurisdiction pursuant to RCFC 12(b)(1), or, alternatively, for failure to state a claim under RCFC 12(b)(6). Briefing on that motion is now complete. Argument is deemed unnecessary.

## II.

Plaintiff’s complaint seeks monetary relief for unjust conviction and imprisonment. Under 28 U.S.C. § 1495, this court has “jurisdiction to render judgment upon any claim for damages by any person unjustly convicted of an offense against the United States.” In order to invoke this statute, a claimant must satisfy the requirements set forth in 28 U.S.C. § 2513. The latter section requires that “[a]ny person suing under section 1495 . . . must allege and prove:”

(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.

28 U.S.C. § 2513(a).<sup>1</sup> Under section 2513(b), “[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).

These statutes fix the jurisdictional perimeter of a Federal civil remedy for injury due to conviction and imprisonment. As this court’s predecessor once held, “when [§§ 1495 and 2513]

---

<sup>1</sup> Under 28 U.S.C. § 2513(e), unless the plaintiff is unjustly sentenced to death, the amount of damages awarded under these provisions “shall not exceed . . . \$50,000 for each 12-month period of incarceration.” Accordingly, even if there were jurisdiction here, plaintiff would not be entitled to a sum anywhere near the \$6.6 million he claims.

are read together it becomes manifest that the sections confer jurisdiction on [the Court of Federal Claims] only in cases . . . in which the . . . conditions set out in section 2513 are complied with.” *Grayson v. United States*, 141 Ct. Cl. 866, 869 (1958); *see also Moore v. United States*, 230 Ct. Cl. 819, 819 (1982); *McMurry v. United States*, 228 Ct. Cl. 897, 897 (1981); *Lucas v. United States*, 228 Ct. Cl. 862, 863 (1981); *Smith v. United States*, 168 Ct. Cl. 242, 242 (1964). These requirements are “strictly construed.” *Vincin v. United States*, 468 F.2d 930, 933 (Ct. Cl. 1972); *see also Phang v. United States*, 87 Fed. Cl. 321, 330 (2009). In this way, “Congress carefully limited the availability of these statutes to those who are truly innocent.” *Lucas*, 228 Ct. Cl. at 863.

Mr. Finley’s efforts to obtain a “certificate of innocence” have fallen short. Section 2513(a) requires, as a precondition to this court’s exercise of jurisdiction under section 1495, the allegation and showing that plaintiff “did not commit any of the acts charged” and “did not by misconduct or neglect cause or bring about his own prosecution.” While plaintiff has essentially alleged this in his complaint, he is unable to prove so via the requisite pardon or certificate of innocence.<sup>2</sup> Indeed, the district court here, in an order later affirmed by the Ninth Circuit, not only declined to issue such a certificate (or its equivalent), but found, conversely, that plaintiff had not proven his innocence and had negligently caused or brought about his prosecution. Plaintiff thus has not met the requirements of section 2513(a) and his case, therefore, must be dismissed for lack of jurisdiction.<sup>3</sup>

### III.

This court need go no further. Based on the foregoing, it hereby **GRANTS** defendant’s motion to dismiss this case for lack of jurisdiction. The Clerk is hereby ordered to dismiss the complaint.

**IT IS SO ORDERED.**

s/ Francis M. Allegra  
\_\_\_\_\_  
Francis M. Allegra  
Judge

---

<sup>2</sup> While plaintiff claims that the statute does not require this formality, the statutory language is to the contrary. *See* 28 U.S.C. § 2513(b). At the least, a court order must contain recitals sufficient to meet the requirements of the statute, *see Andoleschek v. United States*, 77 F. Supp. 950, 951 (Ct. Cl. 1948); *Hadley v. United States*, 66 F. Supp. 140, 141 (Ct. Cl. 1946); *Wood v. United States*, 91 Fed. Cl. 569, 579 (2009) – and the order here, quite obviously, does not.

<sup>3</sup> There has been some debate as to whether a failure to meet the requirements of section 2513(a) results in a dismissal for lack of jurisdiction or, alternatively, for failure to state a claim. The view that appears most in accord with the statutory language and prior precedent is that such a dismissal is jurisdictional. *See Wood*, 91 Fed. Cl. at 578-79 (reaching this conclusion after an extensive review of the cases).