

No. 02-789C

(Filed: September 5, 2002)

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**MICHAEL ANTHONY WOOD,**

Plaintiff,

v.

**THE UNITED STATES,**

Defendant.

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**ORDER**

It is hereby **ORDERED** that Plaintiff's complaint, filed on July 12, 2002, be dismissed for lack of jurisdiction.<sup>1</sup>

Plaintiff, a prisoner in federal custody filing *pro se*, seeks the return of personal property, or money damages therefor, seized in conjunction with his arrest and conviction for criminal drug trafficking offenses.<sup>2</sup> While *pro se* pleadings are construed more leniently than those

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<sup>1</sup> Plaintiff's complaint is accompanied by motions for leave to proceed *in forma pauperis* and for appointment of counsel. To the extent it is necessary to rule on these motions, Plaintiff's motion to proceed *in forma pauperis* is **GRANTED**. Plaintiff's motion for appointment of counsel in this civil action is entirely within the Court's discretion and such appointment has rarely, if ever, been granted in this Court. *Bauer v. United States*, 40 Fed. Cl. 469, 469 (1998). Plaintiff's motion is mooted by this Court's dismissal of the complaint as time-barred, but to the extent it is necessary to rule on the motion, Plaintiff's motion for appointment of counsel is **DENIED**.

<sup>2</sup> Plaintiff's complaint alleges violations of his rights under the Privileges and Immunities Clause of the Constitution as well as of the First, Fourth, Fifth, Sixth, Eighth, and Ninth Amendments to the Constitution. In essence, the complaint states a takings claim under the Fifth

drafted by lawyers, *Bowman v. United States*, 35 Fed. Cl. 397, 406 (1996), Plaintiff's claim is nonetheless barred by the six-year statute of limitations that governs the filing of suit in the Court of Federal Claims. 28 U.S.C. § 2501 (1994) ("Every 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 accrues.").

The six year limitation is a jurisdictional boundary that circumscribes the waiver of sovereign immunity afforded by the Tucker Act, 28 U.S.C. §1491 (1994). *Franconia Assocs. v. United States*, 240 F.3d 1358, 1362 (Fed.Cir. 2001), *rev'd on other grounds*, 122 S.Ct. 1993, (2002). Further, the six-year limitations period must be strictly construed. *Hopland Band of Pomo Indians v. United States*, 855 F.2d 1573, 1576-77 (Fed. Cir. 1988).

According to Plaintiff's complaint, he was arrested in December 1988,<sup>3</sup> convicted in federal court in May 1989, and sentenced in September 1989 to 235 months of imprisonment. His conviction was affirmed on appeal in March 1990. In paragraph B on page 4 of his complaint, he avers that "[a]t the time of arrest the Drug Enforcement Agency (D.E.A.) seized . . . personal properties later forfeited without Notice and thus due process of law . . ."<sup>4</sup> The complaint further recites in paragraphs K and L that, in 1990, he sought return of the personal property which had been seized "by filing a Motion in the Eastern District of New York under F.R.Cr.P. 41(e)" but that, "[o]n March 8, 1991 Plaintiff's Motion was denied and dismissed . . . for lack of jurisdiction."

Plaintiff's complaint does not cite the statutory basis for the seizure and forfeiture of his property nor elaborate on the dismissal of his motion under Fed. R. Crim. P. 41(e).<sup>5</sup> It is not necessary, however, to resolve the substantive questions that might otherwise arise, such as whether this Court lacks jurisdiction to hear claims for damages associated with the forfeiture of

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Amendment and the Court so construes the complaint.

<sup>3</sup> In paragraph A on page 4 of his complaint, subsequent to the previous recitation of dates of arrest, conviction, etc., Plaintiff cites December 6, 1998, as the date of his arrest. In the context of the rest of Plaintiff's complaint, it is clear that he means 1988 and that the year cited in paragraph A is manifestly a typographical error.

<sup>4</sup> The property he cites includes a substantial amount of U.S. currency, gold jewelry, a cellular phone, and two automobiles.

<sup>5</sup> Fed. R. Crim. P. 41(e) provides, in relevant part,

Motion for Return of Property. A person aggrieved by an unlawful search and seizure or by the deprivation of property may move the district court for the district in which the property was seized for the return of the property on the ground that such person is entitled to lawful possession of the property.

property pursuant to a criminal statute, *Silva v. United States*, 51 Fed. Cl. 374, 374 (2002), *Maracalin v. United States*, 52 Fed. Cl. 736, 743 (2002), whether Fed. R. Crim. P. 41(e) may be construed as a waiver of sovereign immunity entitling a criminal defendant to money damages for the value of evidence seized, *Silva*, 51 Fed. Cl. at 379, or whether Plaintiff's complaint amounts to an impermissible collateral attack on a district court's forfeiture ruling, *Meincke v. United States*, 14 Cl. Ct. 383, 386 (1988).

It is evident from the complaint that Plaintiff's property was seized in 1988. That is the time when Plaintiff's cause of action, if he had one, first accrued. According to the Federal Circuit, "a claim 'first accrues' when all the events have occurred which fix the alleged liability of the defendants and entitle plaintiff to institute an action." *Hopland Band*, 855 F.2d at 1577. Further, it is evident by his Rule 41(e) motion in 1990 that Plaintiff was aware of his cause of action. "Once plaintiff is on inquiry that it has a potential claim, the statute of limitations begins to run." *Coastal Petroleum Co. v. United States*, 228 Ct. Cl. 864, 867 (1981).

Inasmuch as "statute of limitation issues . . . are jurisdictional," *Seldovia Native Ass'n, Inc. v. United States*, 144 F.3d 769, 774 (Fed. Cir. 1998); see *Bray v. United States*, 785 F.2d 989, 992 (Fed. Cir. 1986), Plaintiff's complaint, filed July 12, 2002, is wholly barred by the six-year statute of limitations.

Accordingly, the Clerk of the Court is directed to dismiss the complaint.

**IT IS SO ORDERED.**

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EDWARD J. DAMICH  
Chief Judge