

In the United States Court of Federal Claims

**No. 09-279C
(Filed: June 8, 2009)
NOT FOR PUBLICATION**

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JAMES DAVIS BENNETT, *
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Plaintiff, *
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v. *
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THE UNITED STATES, *
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Defendant, *
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***** *

ORDER DISMISSING WITHOUT PREJUDICE

On May 1, 2009, James Davis Bennett (“Mr. Bennett” or “plaintiff”), an inmate at Safford Federal Correctional Institution in Safford, AZ, filed a pro se complaint against the United States alleging that he is entitled to compensation in the amount of \$125,000,000 for unjust conviction and imprisonment under 28 U.S.C. § 1495 (2009). Because Mr. Bennett has not met the requirements of 28 U.S.C. § 2513, the court lacks jurisdiction over this case and accordingly orders the clerk to **DISMISS** the case without prejudice.

BACKGROUND

For the purposes of this order, the court accepts as true the following allegations in plaintiff's complaint. Henke v. United States, 60 F.3d 795, 797 (Fed. Cir. 1995) (citing Scheuer v. Rhodes, 416 U.S. 232, 236-37 (1974); Catawba Indian Tribe of South Carolina v. United States, 982 F.2d 1564 (Fed. Cir. 1993) (quotation omitted)). In September of 2000, the FBI began to investigate Mr. Bennett on suspicion of his involvement in an elaborate property-flipping scheme.¹ Pl.'s Ex. A. On April 5, 2002, FBI Agent Michael Rawlins obtained a search warrant and, on January 29, 2003, Assistant United States Attorney David Hoffer filed a ten-count indictment. Compl. ¶¶ 7-8. On September 7, 2005, a grand jury produced the eleven-count Second Superseding Indictment, each alleging a separate instance of fraud, and Mr. Bennett was arrested and charged in the United States District Court for the Central District of California. Pl.'s Ex. B. Four charges were filed under 18 U.S.C. § 1343, dealing with wire fraud, and seven charges were filed under 18 U.S.C. § 1344, dealing with bank fraud. Pl.'s Ex. B. At some point, a twelfth count was added to the indictment alleging Mr. Bennett's

¹According to the affidavit of FBI Agent Michael Rawlins, this scheme is one

whereby real estate professionals purchase properties at one price and then simultaneously sell (or "flip") the same piece of property for a significantly higher price to a straw borrower. In order to obtain mortgage loans for the straw borrowers the real estate professionals fabricate income and credit-related documentation which is included in the corresponding loan packages. These fraudulent loan packages are ultimately submitted to victim lenders who unknowingly fund the fraudulent loans. Very few mortgage payments are ever made on the loans, resulting in numerous foreclosures and tremendous financial losses to the lenders.

Pl.'s Ex. A ¶ 1.

participation in a continuing financial crimes enterprise under 18 U.S.C. § 225. On January 10, 2006, after a fourteen-day jury trial, Mr. Bennett was convicted on charges 1-10 and 12. Compl. ¶ 21. On May 24, 2006, the District Court acquitted Mr. Bennett on charge 12, but denied his motion for acquittal on charges 1-10. *Id.* at ¶ 22, Pl.’s Ex. K. He was sentenced to 121 months in federal prison on October 11, 2006. Compl. ¶ 24, Pl.’s Ex. M. On October 17, 2006, he filed an appeal in the Court of Appeals for the Ninth Circuit.

Throughout the proceeding and in appeals to the Ninth Circuit Court of Appeals, Mr. Bennett has maintained the allegation that he is the victim of “a Government-sponsored illegal conviction ring.” Compl. ¶¶ 2-6. He alleges that Agent Rawlins falsified information, leading to a false indictment. *Id.* at ¶ 34. He further alleges that the judge, prosecutor, and court-appointed defense lawyer all conspired to have him convicted and that numerous judges “From February 2007 to the current date” have furthered the conspiracy with holdings against his interests. *Id.* at ¶¶ 35, 39. However, Mr. Bennett does not allege that his conviction has been reversed or set aside or that he has been pardoned.²

JURISDICTION OVER MR. BENNETT’S CLAIMS

Under 28 U.S.C. § 1495, The Court of Federal Claims has jurisdiction to hear cases of unjust conviction and imprisonment.³ In order to invoke jurisdiction under § 1495, however, a

²An examination of the Ninth Circuit’s docket reveals that his appeal is still pending. The docket also reveals that, for a variety of reasons, briefing in the case has been delayed. When considering dismissal for lack of jurisdiction, the court is permitted to consider evidentiary matters outside of the pleadings. *Clifton v. United States*, 31 Fed. Cl. 593, 596 (1994) (quoting *Indium Corp. of Am. v. Semi-Alloys, Inc.*, 781 F.2d 879, 884 (Fed. Cir. 1985)).

³The statute states:

plaintiff must satisfy the requirements of 28 U.S.C. § 2513, which provide that

- (a) Any person suing under section 1495 of this title must allege and 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 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.
- (b) Proof 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.

As a result, “[t]he Court of Federal Claims may hear a claim for money damages for unjust imprisonment only after a court has reversed a plaintiff’s conviction on the grounds of innocence or if the President of the United States has pardoned the plaintiff.” Zakiya v. United States, 79 Fed. Cl. 231, 235 (2007) (citing Brown v. United States, 42 Fed. Cl. 139, 141-42 (1998)).

Additionally, “The amount of damages awarded shall not exceed \$100,000 for each 12-month period of incarceration for any plaintiff who was unjustly sentenced to death and \$50,000 for each 12-month period of incarceration for any other plaintiff.” 28 U.S.C. § 2513(e). This jurisdiction is strictly construed and the court “does not have the power to review and overturn convictions or to review in detail the facts surrounding a conviction or imprisonment.” Zakiya, 79 Fed. Cl. at 234-35 (citations omitted).

The United States Court of Federal Claims shall have 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.

Because Mr. Bennett is proceeding as a pro se plaintiff, his complaint is held to “less stringent standards than formal pleadings drafted by lawyers’ and can only be dismissed for failure to state a claim if it appears ‘beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.’” Estelle v. Gamble, 429 U.S. 97 (1976) (quoting Haines v. Kerner, 404 U.S. 519 (1972)). Regardless, “while the Court will generously construe a pro se complaint, the pro se plaintiff still must establish the requisite elements of his claim.” Humphrey v. United States, 52 Fed. Cl. 593 (2002) (citing Sanders v. United States, 252 F.3d 1329 (Fed. Cir. 2001)).

It is clear from a review of Mr. Bennett’s complaint and the seventeen exhibits attached that Mr. Bennett has not satisfied the requirements set forth in § 2513. Therefore, the court does not have jurisdiction under § 1495. Although Mr. Bennett points to various documents and transcripts from his trial as well as letters regarding his attempts to appeal, none is presented as, or appears to be, a “certificate of the court or pardon” as required under § 2513. Additionally, there is no allegation, either of a finding of not guilty in any court or proceeding or of a pardon, that would satisfy § 2513(a). Without a “certificate of the court or pardon,” this court cannot exercise jurisdiction over the case. Id.

The fact that the district court acquitted Bennett of the § 225 charge does not alter this result as, according to his complaint, he was not sentenced on that count. Pl.’s Ex. M. Moreover, the Federal Circuit has held that, in order to maintain a claim under § 1495, there must be evidence that the conviction was reversed or the plaintiff was pardoned. In Humphrey v. United States, 60 Fed.Appx. 292 (Fed.Cir. 2003), the Federal Circuit Court of Appeals affirmed the dismissal of a claim for damages under 28 U.S.C. § 1495 on the grounds that the plaintiff

failed to satisfy the requirements of § 2513. In that case, the plaintiff sought damages based on the fact that a portion of his conviction was vacated. Humphrey, 60 Fed.Appx. at 293. The Circuit determined that, even though he would have been released eight months earlier had he not been convicted of the count, the order of the United States District Court for the Northern District of Ohio stating that the count was dismissed and the sentence vacated was not sufficient to satisfy the requirements of § 2513 because “[t]he Order did not refer to Mr. Humphrey’s guilt or innocence or the nature of Mr. Humphrey’s acts related to the charge.” Id. at 293-94; see also Chevalier v. United States, No. 2008-5176, 2009 WL 1519899 (Fed. Cir. June 2, 2009) (the Federal Circuit affirmed the sua sponte dismissal of a pro se complaint on the grounds that the plaintiff had not satisfied the requirements of § 2513 where the plaintiff could not provide proof of a reversal).

In sum, because Mr. Bennett has not satisfied the pleading requirements of § 2513, even when his complaint is construed generously, the court lacks § 1495 jurisdiction to hear the case. The clerk is therefore ordered to **DISMISS** this case without prejudice.

IT IS SO ORDERED.

s/Nancy B. Firestone
NANCY B. FIRESTONE
Judge