

FILED
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U.S. COURT OF
FEDERAL CLAIMS

In the United States Court of Federal Claims

No. 09-154C
Filed August 26, 2009
NOT FOR PUBLICATION

CHRISTOPHER L. HARRIS,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

Christopher L. Harris, Florence, Colorado, *pro se*.

Christopher L. Krafcheck, Trial Attorney, Alan J. Lo Re, Assistant Director, Jeanne E. Davidson, Director, Michael F. Hertz, Deputy Assistant Attorney General, United States Department of Justice, Washington, D.C., for defendant.

OPINION AND ORDER

Christopher Harris seeks to enforce a contract he alleges existed between himself and the Government pursuant to which he offered to pay \$8,000,000 to the Government and in return the Government would release him from incarceration. Because the Court concludes that it lacks jurisdiction over the allegations of the complaint, the lawsuit will be dismissed.

Background

In October 1999, Christopher Harris pled guilty to drug charges in exchange for a reduced sentence, and the United States District Court for the Southern District of Indiana granted the Government's request for a downward departure from the sentence suggested by the guidelines due to Mr. Harris's substantial assistance to the Government. *United States v. Harris*, Entry Discussing Motion for Relief Pursuant to 28 U.S.C. § 2255, No. 95-cv-963 (S.D. Ind. Dec. 5, 2008). In his plea, Mr. Harris waived his right to seek collateral relief under 28 U.S.C. § 2255. *Id.* His conviction became final on November 15, 1999. *Id.*

On June 22, 2005, Mr. Harris filed a motion under § 2255 seeking collateral relief. *Id.* The district court dismissed the motion both because Mr. Harris had waived his right to file such a motion, and because it was filed more than four years after the statute of limitations had expired. *Id.*

On September 30, 2008, Mr. Harris filed a Motion to Vacate, Set Aside or Correct Sentence in the Southern District of Indiana, along with a Tender of Payment to Discharge the Judgment Lien. *Harris v. United States*, No. 08-1315 (S.D. Ind. docket entries 1 & 2). Defendant characterizes Mr. Harris's theory of recovery as arising when the district court waived an "interest requirement" on a \$2,000 fine imposed as part of his sentence, which "changed the nature of the case, as an operation of law, from criminal to contract and, therefore, the sentence is now subject to the Uniform Commercial Code." Def.'s Mot. to Dismiss at 2 (docket entry 8, May 11, 2009). Mr. Harris disagrees with this characterization, stating that "the \$8,000,000 charge against his property to secure payment of the debt created by judgment No. 1:98CR00121-003 is affixed to 21 USC 841(a)(1) and 846, which creates a judicial lien. Harris also propose [sic] that by offering to liquidate this \$8,000,000 fine that causes a judicial lien entitles Harris to immediate release." Plaintiff's Motion in Opposition to Government's Motion to Summarily Dismiss Plaintiff's Complaint (docket entry 9, June 2, 2009).

Plaintiff appears to believe that his guilty plea to a drug charge in federal court was in some unspecified manner governed by the Uniform Commercial Code, and that at his plea hearing "[t]he court [was] looking for an **acceptor** under UCC § 3-410 NOT a guilty or not guilty plea." Compl. at 3. The court is, according to plaintiff, "all civil" rather than criminal, and he is incarcerated because, upon the purportedly erroneous advice of his attorney, he "pled guilty" rather than accepting whatever contract he believes to have been at issue and he is now jailed for contempt of court for being in "dishonor of the commercial process." *Id.* He proposes that by making an offer to the Government to pay \$8,000,000, he has somehow created a "judicial lien" that entitled him to immediate release.¹ Compl. at 4.

¹ Plaintiff does not appear to be the only incarcerated individual who asserts this facially incorrect "crime as contract" theory. See *Monroe v. Beard*, 2007 WL 2359833 (E.D. Pa. Aug. 16, 2007) (observing that "[p]laintiffs assert that 'all crimes are commercial in nature' and that they therefore need the UCC in the criminal court process. . . . [t]hey state that their sentences are actually debt and that they are being held as surety for the bond" before finding the prison's ban declaring UCC materials to be contraband was constitutional); *United States v. Sandoval*, 365 F. Supp. 2d 319 (E.D.N.Y. 2005) (concluding inmate who insisted his criminal case was governed by the UCC was delusional, notwithstanding inmate "sub-culture" of other individuals with similar beliefs); compare Compl. at 7-8 ("In order to secure the bond, I, Christopher L. Harris, the **natural person**, was placed in prison as the **surety** to back the bond which is financed on the investment of the public market place in terms of the sales of stocks and bonds."). The Court will take judicial notice that Mr. Harris's conviction and sentence were criminal judgments entirely and properly entered pursuant to the criminal law, and have nothing whatsoever to do with the Uniform Commercial Code. The judgment in plaintiff's criminal case was not a

Judge David Hamilton of the Indiana district court dismissed Mr. Harris's suit, observing that Mr. Harris "describ[es] his conviction as a 'debt,' and citing provisions of the Uniform Commercial Code and language of Rule 60(b) of the Federal Rules of Civil Procedure, Harris seeks his immediate release." *Harris v. United States*, Entry Discussing Motion to Discharge, Satisfy, and Release Judgment Lien, No. 09-1315 (S.D. Ind. Dec. 30, 2008). Judge Hamilton stated that "[t]he use of obtuse and inapt language . . . does not disguise the fact that through this document Harris seeks to 'extinguish' the penalties imposed as the sentence" in the criminal action. *Id.* Mr. Harris's "offer of performance" was therefore treated as a motion for relief from his sentence under 28 U.S.C. § 2255. *Id.* Because Mr. Harris had already filed a § 2255 motion, this subsequent lawsuit was a successive petition and, because no leave of court had been obtained, was dismissed for lack of jurisdiction. *Id.* Mr. Harris appealed the trial court's decision, and the Seventh Circuit construed the appeal as a request for a certificate of appealability and denied the request. *Harris v. United States*, No. 08-3934 (7th Cir. Feb. 18, 2009). The Seventh Circuit stated that in the underlying action Mr. Harris "asserted that his prison sentence could be satisfied by a monetary payment to the federal government," and when the Government failed to respond to his motion, "the district court should order him released." *Id.* The Seventh Circuit concluded Mr. Harris's contentions were "meritless." *Id.*

On March 10, 2009, Mr. Harris filed in this court a "Motion to Satisfy, Release or Discharge the Judgment Lien Attached to Case No. 1:98CR00121-003 and Pursuant to Rule 60(b)(5) – Jurisdictional Memorandum" (docket entry 1, "Complaint") ("Compl."). This document recites the facts above, characterizing the "tender of payment" as an offer by Mr. Harris to "pay off" his conviction and the Government's failure to respond as an "acceptance" of that offer. *Id.* Mr. Harris seeks, among other things, an order from this Court requiring the "U.S. Commissioner to discharge the Judgment in a Criminal Case" and for the Court to "Order the **immediate release** of the Plaintiff, Christopher L. Harris." *Id.*

Defendant filed a motion to dismiss, which plaintiff opposed, and defendant filed a reply. Plaintiff then filed a series of documents, beginning with a motion for summary judgment filed on June 24, 2009 (docket entry 13), followed by a "Formal Objection to the Defendant's Refusal to Accept Tender and Breach of Contract" (docket entry 14, June 25, 2009), alleging that the defendant had no legal right to refuse to accept his tender of payment in purported satisfaction of the judgment. Plaintiff also filed Objections to the Defendant's Misrepresentations in the Defendant's Reply (docket entry 15, July 10, 2009). On July 22, 2009, he filed a Motion and Order to Enter Satisfaction of Judgment Pursuant to 28 U.S.C.S. §§ 3201 and 3206 (docket entry 16). On July 24, 2009, plaintiff filed Proposed Findings of Uncontroverted Facts (docket entry 18). On July 31, 2009, plaintiff filed a Motion for Entry of Summary Judgment in Favor of Plaintiff as a Matter of Law (docket entry 17).

"commercial presentment," did not constitute an "informal contract" and did not give plaintiff any rights under the Uniform Commercial Code.

Standard of Review

Pro se plaintiffs are entitled to liberal construction of their pleadings. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). But this leniency does not allow the court to hear cases outside of its jurisdiction. So the *pro se* plaintiff, like all plaintiffs, must meet jurisdictional requirements before his case can be heard. *Kelley v. Sec'y, U.S. Dep't. of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987); *Biddulph v. United States*, 74 Fed. Cl. 765, 767 (2006). If plaintiff fails to establish that the court possesses subject matter jurisdiction, then the Court must dismiss the complaint under Rule 12(h)(3) of the Rules of the Court of Federal Claims.

For the purposes of determining subject matter jurisdiction, the Court will assume that all undisputed facts alleged in the complaint are true and draw all reasonable inferences in Mr. Harris's favor. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). But even after doing so, Mr. Harris's complaint does not state any claim that is within the power of this court to hear.

Analysis

Like all federal courts, the Court of Federal Claims is a court of limited jurisdiction. Pursuant to 28 U.S.C. § 1491(a)(1), the judges of this court may only 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."

This court does not possess jurisdiction to hear cases arising out of criminal violations, including petitions under § 2255 or for writs of habeas corpus. 28 U.S.C. § 2255 (allowing prisoner to file a motion in "the court which imposed the sentence"); *Ledford v. United States*, 297 F.3d 1378, 1381 (Fed. Cir. 2002) ("[T]he habeas statute does not list the Court of Federal Claims among those courts empowered to grant a writ of habeas corpus . . ."); *Joshua v. United States*, 17 F.3d 378, 379 (Fed. Cir. 1994). To the extent that Mr. Harris challenges his conviction, directly or collaterally, this Court lacks jurisdiction over his complaint.

The court does hear cases arising out of civil contracts with the Government, but very rarely has the power to hear any lawsuit alleged to arise out of a contract in a criminal case because "[b]eing a creation of the criminal justice system, it is logical that the remedies for breach of a plea agreement are found within that system."² *Drakes v. United States*, 28 Fed. Cl. 190, 194 (1993) ("Such agreements, however, are not contracts in the civil sense."). Therefore, "courts have consistently limited relief for breach of plea agreements to the criminal courts in which they were concluded and allowed either specific performance or withdrawal of the guilty plea." *Id.*

² This Court may hear a contract case involving a plea agreement only upon a finding of "specific authority by the AUSA to bind the Government to pay money" and contract language setting forth how liability in the event of breach is to be determined. *Drakes*, 28 Fed. Cl. at 193.

Regardless of Mr. Harris's allegations of a "conversion" of his dealings with the Government from a criminal conviction to a civil contract, he originally sought release from his imprisonment. The Court does not possess jurisdiction to release prisoners or overturn convictions. *Drakes*, 28 Fed. Cl. at 194; *Lott v. United States*, 11 Cl. Ct. 852, 853 (1987). Mr. Harris appears to acknowledge this fact in a "motion to amend" dated June 2, 2009, in which he observes that although he "sought his immediate release from a Federal criminal confinement facility, . . . [t]his Court does not possess jurisdiction to provide such relief," and he therefore asks "that the Court amend his complaint." The motion to amend is **GRANTED**, although what Mr. Harris is asking the Court to do then becomes even murkier. The remaining portions of the relief requested are:

1. As an operation of law the Plaintiff is entitled to have his unrebutted affidavits entered as the judgment. U.S. v. Kis, 658 F.2d 526, 536 (7th Cir.).³
2. Order the UNITED STATES OF AMERICA to mark the judgment **satisfied** so that it can be properly entered.
3. Administer the remedies provided by the Commercial Code. **U.C.C. §1-106(2) Comment 2.**⁴
4. Order the U.S. District Clerk of Court at Southern Indiana-Indianapolis, to file a satisfaction of judgment or release of lien on behalf of the Plaintiff, even if the UNITED STATES refuses to acknowledge it.
5. Order the U.S. Commissioner to discharge the Judgment in a Criminal Case Order

³ Even assuming that there is such an unrebutted affidavit, plaintiff is not entitled to have it entered as the judgment. The Court gives the affidavit "due consideration" and then determines its "probative value." *Gurr v. Sec'y of Health and Human Servs.*, 37 Fed. Cl. 314, 320 (1997). The Court concludes that it is not necessary to address plaintiff's affidavits because it lacks jurisdiction, but even if it did consider the affidavits, it would assign them very little probative weight due to the irrelevancy of the facts stated to any viable legal theory.

⁴ The Uniform Commercial Code, Section 1-106(2) states that "Any right or obligation declared by this Act is enforceable by action unless the provision declaring it specifies a different and limited effect," and comment 2 reads "Under subsection (2) any right or obligation described in this Act is enforceable by court action, even though no remedy may be expressly provided, unless a particular provision specifies a different and limited effect. Whether specific performance or other equitable relief is available is determined not by this section but by specific provisions and by supplementary principles. *Cf.* Sections 1-103, 2-716." Because Mr. Harris's criminal conviction does not arise under the Uniform Commercial Code, it is not a "right or obligation" within the meaning of the U.C.C. and Section 1-106(2) and comment 2 to that section are inapplicable.

Compl., Relief Sought.

These items (such as marking the judgment satisfied, ordering the court clerk to file a satisfaction of judgment, and ordering the discharge of the judgment in his criminal case) are in effect asking for the nullification of plaintiff's criminal sentence and his ultimate release from prison, and they are, like an order for his release directly, outside the jurisdiction of this Court. Plaintiff's criminal conviction is not governed in any way by the Uniform Commercial Code and the various documents he submits do not constitute contracts with the United States Government within the meaning of this Court's statutory grant of jurisdiction set forth in 28 U.S.C. § 1491(a)(1). *Kania v. United States*, 650 F.2d 264, 268 (Ct. Cl. 1981). Even if they were somehow contractual, they would be properly considered by a court with jurisdiction over criminal matters, which this Court is most assuredly not.

It is not clear whether plaintiff claims wrongful imprisonment, but to the extent he does so, it is improper. Before it may be heard in this court, any claim of wrongful imprisonment must be preceded by a presidential pardon or another court's reversal of the conviction on the grounds of innocence. *Humphrey v. United States*, 52 Fed. Cl. 593, 596-97 (2002); *Lott v. United States*, 11 Cl. Ct. 852, 853 (1987). Mr. Harris does not allege the existence of a pardon or a court finding of innocence, and thus the Court lacks jurisdiction over any such allegations.

Finally, to the extent Mr. Harris's claims arise out of his plea agreement, the events surrounding his guilty plea, or the district court's waiver of the accrual of interest on November 1, 1999, his lawsuit is barred by the statute of limitations, which requires that a claim be filed within six years of the "last event . . . that gives plaintiff a cause of action." *Adams v. United States*, 46 Fed. Cl. 834, 838, *aff'd*, 243 F.3d 560 (Fed. Cir. 2000).

Because the court does not have the power to hear any of the claims Mr. Harris asserts, this action must be dismissed unless transfer to another court is warranted pursuant to 28 U.S.C. § 1631 (2006).⁵ The Court has determined that it is not "in the interest of justice" to transfer plaintiff's action to another court of the United States. *Id.* The Court does not believe that Mr. Harris's legal theory that his criminal conviction is governed by the Uniform Commercial Code would be found to have merit in any other court. Furthermore, Mr. Harris has already asserted his theory in the Southern District of Indiana, the only other court with jurisdiction, and that court has rejected his claim. The Court therefore concludes that transfer of this action is not warranted and,

⁵ 28 U.S.C. § 1631 reads: "Whenever a civil action is filed in a court as defined in section 610 of this title . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred."

accordingly, declines to transfer this case to another court.

For the reasons stated above, the Court **GRANTS** defendant's motion to dismiss for lack of subject matter jurisdiction, and **ORDERS** that the complaint be dismissed without prejudice pursuant to Rule 12(h)(3) of the Rules of the Court of Federal Claims. Plaintiff's motion for summary judgment is **DENIED** as moot. The Clerk is directed to enter judgment in accord with this opinion.

IT IS SO ORDERED.


GEORGE W. MILLER
Judge