

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
No. 07-140C

(Filed: May 24, 2007)

CHARLES THOMAS PHILLIPS, <i>pro se</i> ,)
)
Plaintiff,)
)
v.)
)
UNITED STATES,)
)
Defendant.)
)

ORDER

The plaintiff, Charles Thomas Phillips, is incarcerated by the State of Alabama. In this action, Mr. Phillips, among other things, requests that the court order a federal official to investigate his allegations of prison abuse and seeks an injunction against Alabama state officials relating to his care, custody, and control. The government has moved to dismiss Mr. Phillips' complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of the Court of Federal Claims ("RCFC"), asserting that this court lacks subject matter jurisdiction over his claims and that Mr. Phillips has failed to state a claim upon which relief can be granted. For the reasons stated below, the government's motion is granted.

BACKGROUND

Mr. Phillips is an inmate at the State of Alabama's Donaldson Correctional Facility in Bessemer, Alabama. He filed suit in this court on March 5, 2007 complaining of deprivation of adequate medical care, increased prison violence, and attempted murder of the plaintiff. Compl. at 2. Attached to Mr. Phillips' complaint is an affidavit alleging that he was beaten on May 7, 1997, and suffered mistreatment on other occasions. Compl. at 1. He avers that the government's "deliberate indifference" deprived him of his constitutional right against cruel and unusual punishment guaranteed by the Eighth Amendment of the United States Constitution and the Alabama Constitution. Compl. at 2. Mr. Phillips also asserts that governmental officials violated 42 U.S.C. § 1997a-1997j and the Code of Alabama 1975, Title 13, Chapters 1-3, relating to a state's deprivation of rights of an institutionalized person. Compl. at 6.

JURISDICTION

“All federal courts are courts of limited jurisdiction,’ [and] [t]his court is no exception.” *Travelers Indem. Co. v. United States*, 72 Fed. Cl. 56, 59 (2006) (quoting *RHI Holdings, Inc. v. United States*, 142 F.3d 1459, 1461 (Fed. Cir. 1998)). “Jurisdiction must be established as a threshold matter before the court may proceed with the merits of this or any other action.” *OTI America, Inc. v. United States*, 68 Fed. Cl. 108, 113 (2005) (citing *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 88-89 (1998)). “Should the court find that it lacks subject matter jurisdiction to decide a case on its merits, it is required either to dismiss the action as a matter of law or to transfer it to another federal court that would have jurisdiction.” *Travelers Indem.*, 72 Fed. Cl. at 59-60 (citing *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1868); *Thoen v. United States*, 765 F.2d 1110, 1116 (Fed. Cir. 1985); *Gray v. United States*, 69 Fed. Cl. 95, 102-03 (2005)).

As plaintiff, Mr. Phillips bears the burden of establishing by a preponderance of the evidence that this court possesses subject matter jurisdiction over his claims. *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988); see *McNutt v. General Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936). In determining whether subject matter jurisdiction exists, a court must accept as true all undisputed facts asserted in the plaintiff’s complaint and “draw all reasonable inferences in favor of the plaintiff.” *Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995); see also *Hamlet v. United States*, 873 F.2d 1414, 1415-16 (Fed. Cir. 1989).

Pro se claimants are held to a less stringent standard in pleading than that which is applied to formal pleadings prepared by counsel. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Nonetheless, a *pro se* plaintiff must distinctly and affirmatively plead subject matter jurisdiction in the complaint. See *Norton v. Larney*, 266 U.S. 511, 515-16 (1925); *Henke*, 60 F.3d at 799.

Under the Tucker Act, the Court of Federal Claims has “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.” 28 U.S.C. § 1491(a)(1). The Tucker Act itself, however, does not confer on a plaintiff a right to recovery. *United States v. Testan*, 424 U.S. 392, 398 (1976). To establish such a right, the plaintiff must also identify a substantive claim that “can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained.” *United States v. Mitchell*, 463 U.S. 206, 217 (1983) (citing *Testan*, 424 U.S. at 400).

Mr. Phillips’ complaint and affidavit, even when liberally construed, fail to implicate a money-mandating constitutional provision, federal statute, or federal regulation under which this court may exercise jurisdiction. Although Mr. Phillips’ complaint might be construed as alleging that the Alabama government, and, derivatively, the federal government, acted in contravention

of the Eighth Amendment in ways that harmed him, *see* Compl. at 2, this constitutional provision does not obligate the government to pay money damages and therefore is not a source of jurisdiction for this court. *See Fry v. United States*, 72 Fed. Cl. 500, 507-08 (2006) (addressing the Bill of Attainder Clause, U.S. Const., art. I, § 9, cl. 3).

Similarly, to the extent that Mr. Phillips' complaint might be construed as alleging damages for acts, actions, and omissions of the Alabama government harming Mr. Phillips, *see* Compl. at 6, such a claim would sound in tort and not fall within Congress's statutory grant of jurisdiction to this court. *See Brown v. United States*, 105 F.3d 621, 623 (Fed. Cir. 1997) ("The Court of Federal Claims . . . lacks jurisdiction over tort actions against the United States.") (citing 28 U.S.C. § 1491(a)). "Jurisdiction to hear tort claims is exclusively granted to the United States District Courts under the Federal Tort Claims Act." *McCauley v. United States*, 38 Fed. Cl. 250, 264 (1997) (citing 28 U.S.C. § 1346(b)).

Lastly, this court does not have plenary authority to hold accountable Alabama state officials or correctional officers for alleged violations of the Alabama Constitution, the Code of Alabama, or 42 U.S.C. § 1997a-1997j. Compl. at 3. The Tucker Act limits the jurisdiction of the Court of Federal Claims to claims against the United States. 28 U.S.C. § 1491(a)(1); *United States v. Sherwood*, 312 U.S. 584, 588 (1941) ("[I]t has been uniformly held . . . that [the Court of Claims' and its successors'] jurisdiction is confined to the rendition of money judgments in suits brought for that relief against the United States, and if the relief sought is against others than the United States the suit as to them must be ignored as beyond the jurisdiction of the court." (citations omitted)).

Overall, this court has no power to address Mr. Phillips' claims premised on the Eighth Amendment, the Alabama Constitution, the Code of Alabama, or 42 U.S.C. § 1997a-1997j.

CONCLUSION

For the reasons stated, the government's motion to dismiss is GRANTED, and this case shall be dismissed without prejudice for lack of subject matter jurisdiction.¹ The Clerk shall enter judgment accordingly. No costs.

It is so ORDERED.

Charles F. Lettow
Judge

¹The government, in its Motion to Dismiss, also requests that Mr. Phillips' complaint be dismissed for failure to state a claim upon which relief can be granted. This request is surplusage because the court does not have subject matter jurisdiction to rule on the merits of Mr. Phillips' claims. *See Fisher v. United States*, 402 F.3d 1167, 1172-73, 1175 (Fed. Cir. 2005) (*en banc* in relevant part); *see also Greenlee County, Ariz. v. United States*, __ F.3d __, 2007 WL 1391389 (Fed. Cir. May 14, 2007).

