

In the United States Court of Federal Claims

No. 11-545C

(Filed: November 22, 2010)

(Unpublished)

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DAMOND UNDRAY MOSLEY,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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Petition for *Certiorari*; Rule 41(a)
Voluntary Dismissal; Rule 12(b)
Lack of Subject Matter Jurisdiction.

Damond Undray Mosley, appearing *pro se*, Fort Stockton, Texas.

Austin M. Fulk, with whom were *Tony West*, Assistant Attorney General, *Jeanne E. Davidson*, Director, *Scott D. Austin*, Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC.

OPINION AND ORDER

WHEELER, Judge.

On August 29, 2011, Plaintiff Damond Undray Mosley filed a *pro se* complaint in this Court, seeking relief under 42 U.S.C. § 1983 (“Civil action for deprivation of rights”). On October 28, 2011, Defendant filed a motion to dismiss Plaintiff’s complaint on the basis that: (1) Mr. Mosley himself had requested dismissal of his complaint; and (2) in any event, the Court does not possess subject matter jurisdiction over his claims. The Court subsequently requested that Plaintiff file a response to Defendant’s motion to dismiss by November 18, 2011, indicating whether Plaintiff, in fact, wished to dismiss his complaint in this Court. As of today’s date, Plaintiff has not filed a response. For the reasons set forth below, the Court hereby GRANTS Defendant’s motion to dismiss.

Background

Plaintiff's complaint is entitled, "Petition for Certiorari," and the first line indicates that the intended recipient is "The Honorable United States Supreme Court." (Compl. 1.) The petition further states that it is being filed pursuant to Rules 32, 35, and 40 of the Federal Rules of Appellate Procedure. Id.

Attached to Defendant's motion to dismiss is a letter that Defendant states it received from Plaintiff on October 24, 2011. (Def.'s Mot. Attach. A, Oct. 28, 2011.) In the letter, Plaintiff says that he "made a mistake" by sending his petition for *certiorari* to this Court. Id. Plaintiff explains that he was given the incorrect address and asks the Court to withdraw his petition. Id. The letter bears the same handwriting as Plaintiff's complaint, and the return address, written on the outside envelope and at the bottom of the letter, indicate that the letter is from Plaintiff. See id. The Court has no reason to doubt the authenticity of this letter.

Discussion

In light of the foregoing facts, the Court concludes that Plaintiff's complaint should be dismissed. Under Rule 41(a)(1)(A)(i) of the U.S. Court of Federal Claims ("RCFC"), a plaintiff may voluntarily dismiss an action without a court order by filing a notice of dismissal before the opposing party serves an answer or a motion for summary judgment. By Plaintiff's own admission, he inadvertently filed his complaint in this Court and is requesting to withdraw it. As such, his complaint should be voluntarily dismissed pursuant to Rule 40(a)(1)(A)(i).

In addition, this Court does not have jurisdiction to entertain a petition for a writ of *certiorari*. See 28 U.S.C. § 1254(1); 28 U.S.C. § 1491 (2006). Accordingly, even if Plaintiff had not wished to withdraw his complaint, the Court would have to dismiss it pursuant to RCFC 12(b)(1).

Conclusion

Based upon the foregoing, Defendant's motion to dismiss pursuant to Rules 12(b) and 41(a) is GRANTED. The Clerk is directed to dismiss Plaintiff's complaint without prejudice.

IT IS SO ORDERED.

THOMAS C. WHEELER
Judge