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NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

BRIAN M. BURMASTER,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2018-1868

Appeal from the United States Court of Federal
Claims in No. 1:17-cv-01903-CFL, Judge Charles F.
Lettow.

Decided: August 7, 2018

BRIAN M. BURMASTER, Milwaukee, WI, pro se.

SEAN SIEKKINEN, Commercial Litigation Branch,
Civil Division, United States Department of Justice,
Washington, DC, for defendant-appellee. Also repre-
sented by TARA K. HOGAN, ROBERT EDWARD KIRSCHMAN,
JR., CHAD A. READLER.

Before O'MALLEY, CLEVENGER, and STOLL, *Circuit
Judges*.

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PER CURIAM.

Brian M. Burmaster appeals from the final decision of the United States Court of Federal Claims (“Claims Court”) dismissing his pro se complaint for lack of subject matter jurisdiction under Rule 12(b)(1) of the Rules of the Court of Federal Claims. *Burmaster v. United States*, No. 1:17-cv-01903, 2018 WL 1417683 (Cl. Ct. Mar. 22, 2018). Because the Claims Court correctly concluded that it lacked jurisdiction over the claims raised in Burmaster’s complaint, we *affirm*.

BACKGROUND

On September 26, 2007, a grand jury indicted Burmaster for three counts of knowingly transmitting in interstate and foreign commerce threats to injure people in violation of 18 U.S.C. § 875(c). Indictment, *United States v. Burmaster*, No. 2:07-cr-00628 (D. Utah Sept. 26, 2007), ECF No. 1. Burmaster was remanded to custody pending trial and, while in custody, underwent a psychiatric exam. Order, *United States v. Burmaster*, No. 2:07-cr-00628 (D. Utah Aug. 8, 2008), ECF No. 43 at 1–2. After that initial exam, the district court found by a preponderance of the evidence that Burmaster “suffer[ed] from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to assist properly in his defense.” *Id.* Accordingly, the district court ordered that Burmaster be committed to the custody of the Attorney General and be hospitalized for treatment in a suitable facility for a reasonable period of time to determine if he could be

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restored to competency, but, in no event, for longer than four months. *Id.* at 2. In July of 2009, the United States moved to dismiss the indictment without prejudice after the district court ultimately concluded that Burmaster's mental competency was not readily restorable. Mot. for Leave to File Rule 48(a) Dismissal, *United States v. Burmaster*, No. 2:07-cr-00628 (D. Utah July 21, 2009), ECF No. 78. The district court granted the dismissal and Burmaster was released from custody.

On November 22, 2013, a grand jury again indicted Burmaster for knowingly and intentionally transmitting in interstate and foreign commerce, from the country of Lebanon to the State of Louisiana, threats to injure a person in violation of § 875(c). Indictment, *United States v. Burmaster*, No. 2:13-cr-00265 (E.D. La. Nov. 22, 2013), ECF No. 3. Burmaster's counsel moved for a psychiatric exam to determine whether he was competent to stand trial, and he was again committed to a federal facility for the purposes of such an exam. Order & Reasons, *United States v. Burmaster*, No. 2:13-cr-00265 (E.D. La. Oct. 21, 2016), ECF No. 49 at 1-2. Doctors at the Federal Medical Center in North Carolina diagnosed Burmaster with Schizoaffective Disorder, Bipolar type and Obsessive Compulsive Personality Disorder. *Id.* at 3. This trial court also found Burmaster incompetent to stand trial at that time and he was again hospitalized for treatment to determine if his competency could be restored. *Id.* Burmaster then filed a petition for writ of mandamus, in which he "complain[ed] of delay in a

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competency evaluation,” “challenge[d] the district court’s determination that he is not competent to stand trial and assert[ed] that his continued detention is unlawful and exceeds the maximum sentence he faces.” Judgment, *United States v. Burmaster*, No. 2:13-cr-00265 (E.D. La. Aug. 17, 2017), ECF No. 69 at 1. The petition was denied. *Id.* The Government filed, and the district court granted, a motion to dismiss without prejudice the indictment for good cause in view of Burmaster’s psychiatric evaluations. Order, *United States v. Burmaster*, No. 2:13-cr-00265 (E.D. La. Aug. 17, 2017), ECF No. 68. Again, Burmaster was released from custody.

On December 5, 2017, Burmaster filed a complaint against the United States in the Claims Court, alleging unlawful imprisonment and a violation of his Sixth Amendment right to a public trial by an impartial jury. Suppl. J.A. 2, 4. Burmaster sought monetary relief for the 1,241 total days he spent incarcerated, first, in Utah between 2008 and 2009, and second, in Louisiana between 2015 and 2017. He also sought “various forms of equitable relief[,] including declarations that ‘the United States of America is not a [r]ogue [n]ation,’ that ‘Americans honor both the word and letter of [their] international commitments,’ that the “‘Mental Health’ statutes (18 [U.S.C. §] 4241 through 18 [U.S.C. §] 4246’ are unconstitutional, and that Mr. Burmaster is ‘competent to stand trial.’” *Burmaster*, 2018 WL 1417683, *1 (quoting Suppl. J.A. at 4). The Government moved to dismiss Burmaster’s complaint for lack of subject matter jurisdiction.

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The Claims Court found that it lacked subject matter jurisdiction over Burmaster's case. First, it found that it lacked jurisdiction over Burmaster's various claims for declaratory relief because the Claims Court's jurisdiction is restricted to claims for liquidated or unliquidated damages in cases not sounding in tort under the Tucker Act, 28 U.S.C. § 1491(a)(1). Next, the Claims Court found it lacked jurisdiction over Burmaster's claim of unjust imprisonment because he was never convicted and he never provided, as required under 28 U.S.C. § 2513(a)–(b), a certificate proving his innocence of the crimes for which he was indicted. Finally, the Claims Court found that it lacked jurisdiction over Burmaster's claim that the Government violated his Sixth Amendment right to a trial by jury because the Claims Court's jurisdiction over constitutional claims arises only when the provisions at issue are money mandating, and the Sixth Amendment is not such a provision. Thus, the Claims Court dismissed Burmaster's complaint.

Burmaster appeals, arguing that the Claims Court has jurisdiction over his claims for unjust imprisonment, seeking equitable relief, and for violation of the Sixth Amendment. We have jurisdiction over a final decision for the Claims Court pursuant to 28 U.S.C. § 1295(a)(3).

DISCUSSION

We review de novo whether the Claims Court possessed jurisdiction. *Wheeler v. United States*, 11 F.3d

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156, 158 (Fed. Cir. 1993). The Tucker Act defines the jurisdiction of the Claims Court. *Nat'l Air Traffic Controllers Assoc. v. United States*, 160 F.3d 714, 716 (Fed. Cir. 1998) (citing 28 U.S.C. § 1491(a)).

First, Burmaster contends that the Claims Court has jurisdiction over his claim of unjust imprisonment. The Tucker Act grants the Claims Court “jurisdiction to render judgment upon any claim for damages by any person unjustly convicted of an offense against the United States and imprisoned.” *Humphrey v. United States*, 60 F. App’x 292, 294 (Fed. Cir. 2003). To satisfy the jurisdictional requirements for claims of unjust imprisonment, the person suing the United States must submit a certificate or pardon stating that “[h]is conviction has been reversed or set aside on the ground that he is not guilty of the offense of which he was convicted,” and that “[h]e did not commit any of the acts charged. . . .” *Id.* (quoting 28 U.S.C. § 2513). Here, presumably because he was never convicted of any offense, Burmaster did not submit such a certificate or pardon, nor did he otherwise assert that he did not commit the crimes charged in the indictments. For these reasons, the Claims Court correctly dismissed Burmaster’s claim for lack of jurisdiction.¹

¹ Burmaster’s complaint also sought treble damages under the Racketeer Influenced Corrupt Organizations (“RICO”) Act, 18 U.S.C. § 1964(c). Suppl. J.A. at 2. The Claims Court held that it “lacks jurisdiction over any claims that may be cognizable under the RICO Act because jurisdiction over such claims ‘is conferred exclusively on the United States District Courts.’” *Burmaster*, 2018 WL 1417683, *2. Burmaster appears to challenge this on appeal. Reply Br. at 4–6. We agree with the Claims Court’s finding

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To the extent Burmaster claims that his pretrial determination was in excess of that necessary to determine if he could be restored to competency, any remedy for that claim must be sought in the courts with jurisdiction over his custody. The Claims Court lacks authority to entertain any such action.

Next, Burmaster contends that the Claims Court has jurisdiction over his claims seeking various forms of equitable relief, including “a judgment on the constitutionality of the ‘Mental Health’ statutes (18 U.S.C. [§] 4241 through 18 U.S.C. [§] 4246).” Suppl. J.A. at 4. The Supreme Court has interpreted the Tucker Act “to require that a plaintiff seeking to invoke the court’s jurisdiction must present a claim for ‘actual, presently due money damages from the United States.’” *Nat’l Air*, 160 F.3d at 716 (quoting *United States v. King*, 395 U.S. 1, 3 (1969)). “Although the Tucker Act has been amended to permit the [Claims Court] to grant equitable relief *ancillary* to claims for monetary relief over which it has jurisdiction, there is no provision giving the [Claims Court] jurisdiction to grant equitable relief when it is unrelated to a claim for monetary relief pending before the court.” *Id.* (internal citations omitted) (emphasis added). Here, as noted above, the Claims Court lacks jurisdiction over Burmaster’s claim for monetary relief, i.e. his claim for unjust imprisonment. Even if it had jurisdiction, Burmaster’s claims for equitable relief are unrelated to his claims for

that it lacks jurisdiction over RICO claims. See § 1964(a) (“The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter. . . .”).

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monetary relief. Indeed, a judgment regarding Burmaster's competency to stand trial or a judgment regarding the constitutionality of 18 U.S.C. §§ 4241–46 would not help Burmaster obtain monetary relief under his claim for unjust imprisonment. Therefore, the Claims Court correctly found that it lacked jurisdiction over Burmaster's claims for equitable relief.

Finally, Burmaster contends that the Claims Court has jurisdiction over his Sixth Amendment claim. The Claims Court has jurisdiction over claims against the United States that are founded upon a Constitutional provision, but only those provisions that mandate payment of money damages. *Humphrey*, 60 F. App'x at 295. The Sixth Amendment does not mandate money damages under the circumstances presented here, *Smith v. United States*, 36 F. App'x 444, 446 (Fed. Cir. 2002), therefore, the Claims Court correctly dismissed Burmaster's claim.

CONCLUSION

Because the Claims Court lacks subject matter jurisdiction over each of Burmaster's claims, we *affirm* the Claims Court's dismissal of Burmaster's complaint.

AFFIRMED

COSTS

No costs.

In the United States Court of Federal Claims
No. 17-1903C

(Filed: March 22, 2018)

(NOT TO BE PUBLISHED)

*****)
BRIAN M. BURMASTER,)
Plaintiff,)
v.)
UNITED STATES,)
Defendant.)

Brian M. Burmaster, *pro se*, Milwaukee, Wisconsin.

Sean Siekkinen, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C., for defendant. With him on the briefs were Chad A. Readler, Acting Assistant Attorney General, Civil Division, Robert E. Kirschman, Jr., Director, and Tara K. Hogan, Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington D.C.

OPINION AND ORDER

LETTOW, Judge.

Plaintiff, Brian Burmaster, has filed a complaint seeking equitable and monetary relief for harms

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allegedly caused by the United States. *See* Compl. at 1, 4;¹ Def.’s Mot. to Dismiss (“Def.’s Mot.”) at 2, ECF No. 6. Though the exact facts and allegations are somewhat indefinite, it appears that Mr. Burmaster was indicted for “threatening communications” in 2008 and was subjected to two separate, allegedly unlawful incarcerations without ever standing trial. *See* Compl. App. B. at 4-5; Compl. at 2. He was first held in Utah for 506 days between 2008 and 2009 and in Louisiana for 735 days between 2015 and 2017, for a total of 1,241 days. Compl. at 2; Def.’s Mot. at 1. Mr. Burmaster claims that these detentions were unlawful because “[t]here was never a trial as mandated by the Sixth Amendment of our sacred [United States] Constitution.” Compl. at 2. He claims that he was “denied . . . that fundamental human right” by “[g]overnment psychiatrists [who] . . . falsely stat[ed] that [he] was incompetent to stand trial.” Compl. at 2 (internal quotation marks omitted).

As a remedy for the alleged deprivation of his Sixth Amendment rights and the 1,241 “hostage days” he spent in prison without a trial, Mr. Burmaster requests “the sum of \$112 million, which is in accordance with the international unlawful imprisonment rate []per the International Court of Justice.” *See* Compl. at 2. According to Mr. Burmaster’s reading of the decision of the International Court of Justice in *United States of America v. Iran*, hostages were compensated at the

¹ Because only portions of the complaint are paginated, citations to particular pages of the complaint refer to the order in which the pages actually appear.

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rate of \$10,000 per day of captivity in 1979; “[i]n today’s inflation-adjusted currency, this amounts to \$30,000 per day.” *See* Compl. at 2. Because Mr. Burmaster seeks treble damages against the United States under 18 U.S.C. § 1964(c), the Racketeer Influenced Corrupt Organizations (“RICO”) Act, he claims putative damages totaling \$112,000,000. *See* Compl. at 2, 4.

Mr. Burmaster also seeks various forms of equitable relief including declarations that “the United States of America is not a [r]ogue [n]ation,” that “Americans honor both the word and letter of [their] international commitments,” that the “‘Mental Health’ statutes (18 [U.S.C. §] 4241 through 18 [U.S.C. §] 4246)” are unconstitutional, and that Mr. Burmaster is “competent to stand trial.” *See* Compl. at 4.

Pending before the court is the government’s motion for dismissal of Mr. Burmaster’s complaint under Rules 12(b)(1) of the Rules of the Court of Federal Claims for lack of subject matter jurisdiction. *See generally* Def.’s Mot. Mr. Burmaster has responded in opposition to the government’s motion, *see generally* Pl.’s Resp., ECF No. 7, and all briefing has been completed.

STANDARDS FOR DECISION

In any action, the plaintiff has the burden of establishing jurisdiction. *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 747 (Fed. Cir. 1988). When ruling on a motion to dismiss for lack of jurisdiction, the court must “accept as true all undisputed facts asserted in the plaintiff’s complaint and draw all

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reasonable inferences in favor of the plaintiff” *Trusted Integration, Inc. v. United States*, 659 F.3d 1159, 1163 (Fed. Cir. 2011). The leniency afforded to a *pro se* plaintiff with respect to formalities does not relieve *pro se* litigants of their obligation to satisfy jurisdictional requirements. *Kelley v. Secretary, United States Dep’t of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987).

The Tucker Act waives the sovereign immunity of the United States, *see United States v. Mitchell*, 463 U.S. 206, 212 (1983), and provides this court with jurisdiction over “any claim against the United States founded either upon the Constitution, or any Act of Congress[,] or any regulation of an executive department . . . for liquidated or unliquidated damages in cases not sounding in tort.” 28 U.S.C. § 1491(a)(1). However, the Tucker Act does not provide a plaintiff with substantive rights. *United States v. Testan*, 424 U.S. 392, 398 (1976). Rather, to establish jurisdiction, “a plaintiff must identify a separate source of substantive law that creates the right to money damages.” *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (en banc in relevant part) (citing *Mitchell*, 463 U.S. at 216; *Testan*, 424 U.S. at 398). Jurisdiction over claims for money damages does not give rise to “independent jurisdiction over . . . claims for equitable relief.” *See Taylor v. United States*, 113 Fed. Cl. 171, 173 (2013); *see also United States v. King*, 395 U.S. 1, 2-3 (1969) (citing *Glidden Co. v. Zdanok*, 370 U.S. 530, 557 (1962)); *United States v. Jones*, 131 U.S. 1, 9 (1889), *United States v. Alire*, 73 U.S. (6 Wall.) 573, 575 (1867)); *Halim v. United States*, 106 Fed. Cl. 677, 684-85 (2012)

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(citing *National Air Traffic Controllers Ass'n v. United States*, 160 F.3d 714, 716-17 (Fed. Cir. 1998)) (“This court has never been afforded the general authority to issue declaratory judgments or to grant injunctive relief.”).

This court also has jurisdiction over claims for damages attributable to “unjust conviction and imprisonment.” 28 U.S.C. § 1495 (“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.”). But a suit under Section 1495 must be accompanied by proof that the plaintiff’s “conviction has been reversed or set aside on the ground that he is not guilty of the offense of which he was convicted . . . or that he has been pardoned upon the stated ground of innocence and unjust conviction.” 28 U.S.C. § 2513(a). Proof of such 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.*” *Id.* § 2513(b) (emphasis added). Submission of the certificate specified in Section 2513(b) is necessary to establish a basis for a claim pursuant to Sections 1495 and 2513. *Sykes v. United States*, 105 Fed. Cl. 231, 233 (2012) (citing *Vincin v. United States*, 468 F.2d 930, 933 (Ct. Cl. 1972)); *see also Grayson v. United States*, 141 Ct. Cl. 866, 869 (1958).

“If a court lacks jurisdiction to decide the merits of a case, dismissal is required as a matter of law.” *Gray v. United States*, 69 Fed. Cl. 95, 98 (2005) (citing *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1868));

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Thoen v. United States, 765 F.2d 1110, 1116 (Fed. Cir. 1985); *see also Treviño v. United States*, 113 Fed. Cl. 204, 207 (2013) (“Where the court has not been granted jurisdiction to hear a claim, the case must be dismissed.”) (citing *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006)).

ANALYSIS

This court lacks jurisdiction over Mr. Burmaster’s various claims for declaratory relief. *See Taylor*, 113 Fed. Cl. at 173. The court also lacks jurisdiction over any claims that may be cognizable under the RICO Act because jurisdiction over such claims “is conferred exclusively on the United States District Courts.” *Cf. Lowe v. United States*, 76 Fed. Cl. 262, 266 (2007); 18 U.S.C. § 1964(c) (“Any person injured in his business or property by reason of a violation of [the RICO Act] may sue therefor in any appropriate *United States district court*.”) (emphasis added). Therefore, Mr. Burmaster is not entitled to seek treble damages in this court.

Under the Tucker Act, the court’s jurisdiction is limited to, among other things, claims “for liquated or unliquidated damages in cases not sounding in tort.” 28 U.S.C. § 1491(a)(1). To the extent that Mr. Burmaster alleges that his detentions were tortious, there is no jurisdiction to consider such claims. Pursuant to 28 U.S.C. §§ 1495 and 2513, this court also lacks jurisdiction over Mr. Burmaster’s claims of unlawful imprisonment because he was not convicted of any offense against the United States, nor has he provided a

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certificate as proof of his innocence of the crimes for which he was indicted. *See* 28 U.S.C. § 2513(a)-(b). Because the provision of such a certificate is a prerequisite to establishing a cause of action, failure to provide it warrants dismissal, whether for lack of jurisdiction, *Grayson*, 141 Ct. Cl. at 869, or for failure to state a claim, *Bobka v. United States*, 133 Fed. Cl. 405, 409-10 (2017); *Sykes*, 105 Fed. Cl. at 234.²

Mr. Burmaster's remaining claim is a right to damages for denial of "that fundamental human right" of a "public trial by an impartial jury" under "the Sixth Amendment." *See* Compl. at 2 (internal alterations omitted). Constitutional provisions can give rise to jurisdiction in this court when they are money mandating, *i.e.*, when they "explicitly [or] implicitly obligate the federal government to pay damages." *United States v. Connolly*, 716 F.2d 882, 887 (Fed. Cir. 1983) (en banc). But "Sixth Amendment claim[s] . . . are [not] money mandating[,] . . . [and t]hus, they fall outside the jurisdiction of th[is] court." *See Winston v. United States*, 465 Fed. Appx. 960, 961 (Fed. Cir. 2012).

In sum Mr. Burmaster has not asserted any claim that gives rise to jurisdiction in this court, and this action must be dismissed. *See Thoen*, 765 F.2d at 1116.

² Even if this court had jurisdiction over Mr. Burmaster's claim of unlawful imprisonment, damages under the statute are capped, at most, at "\$100,000 for each 12-month period of incarceration." *See* 28 U.S.C. § 2513(e).

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CONCLUSION

For the reasons stated, the government's motion to dismiss Mr. Burmaster's complaint is GRANTED. The clerk shall enter judgment in accord with this disposition.

No costs.

It is so ORDERED.

/s/ Charles F. Lettow
Charles F. Lettow
Judge
