

NOTE: This order is nonprecedential.

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

FREDERICK DEMOND WILSON,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2020-1949

Appeal from the United States Court of Federal Claims
in No. 1:20-cv-00130-DAT, Judge David A. Tapp.

Before REYNA, WALLACH, and CHEN, *Circuit Judges*.

PER CURIAM.

O R D E R

Having considered Frederick Demond Wilson's complaint, the judgment of the United States Court of Federal Claims, and the opening informal brief, the court now dismisses this appeal under 28 U.S.C. § 1915(e)(2)(B).

In the underlying complaint, Mr. Wilson alleged, *inter alia*, that the United States and former President Bill Clinton used Mr. Wilson's intellectual property without his permission. The Court of Federal Claims dismissed, finding that Mr. Wilson had failed to establish the court's subject

matter because he had not stated that the alleged wrong occurred within the six years prior to the filing of his complaint as required pursuant to 28 U.S.C. § 2501.

Mr. Wilson is proceeding in forma pauperis on appeal. By statute, “the court shall dismiss the case at any time if the court determines that . . . [the] appeal . . . is frivolous . . .” 28 U.S.C. § 1915(e)(2)(B). An appeal is frivolous if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

Nothing in Mr. Wilson’s filings in this court address the deficiency found in his complaint, i.e., when the wrong was alleged to have occurred. The arguments Mr. Wilson does raise, such as collusion, the pandemic, and tampering, do not create a non-frivolous issue as to whether the Court of Federal Claims erred in dismissing the complaint. Dismissal of the appeal is therefore necessary.

Accordingly,

IT IS ORDERED THAT:

- (1) The appeal is dismissed.
- (2) Any pending motions are denied as moot.
- (3) Each side shall bear its own costs.

FOR THE COURT

September 23, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court

In the United States Court of Federal Claims

No. 20-130C

Filed: May 20, 2020

FREDERICK DEMOND WILSON,

Plaintiff,

v.

UNITED STATES,

Defendant.

OPINION AND ORDER

Tapp, Judge.

On February 2, 2020, Plaintiff, Mr. Frederick Wilson (“Wilson”), filed a complaint in this Court. (Compl., ECF No. 1). Wilson’s complaint is largely incomprehensible but, as best the Court can discern, Wilson alleges that the United States and former President Bill Clinton used his intellectual property without permission. (*See generally*, Compl.). On April 16, 2020, Defendant, the United States, filed a Motion to Dismiss, pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of the United States Court of Federal Claims (RCFC). (Def.’s Mot., ECF No. 9). Wilson’s response was due by May 15, 2020. Although Wilson has filed numerous documents since the United States moved to dismiss, none of these documents were responsive to the United States’ motion.¹ As such, there being no just reason for delay and for the reasons set forth below, the Court hereby **GRANTS** the United States’ motion to dismiss.

The burden of establishing subject matter jurisdiction rests with the plaintiff, who must do so by a preponderance of the evidence. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988). A *pro se* plaintiff’s pleadings are generally held to “less stringent standards” than those of a professional lawyer. *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972) (requiring that allegations contained in a *pro se* complaint be held to “less stringent standards than formal pleadings drafted by lawyers”). However, the Court cannot extend this leniency to relieve plaintiffs of their jurisdictional burden. *Kelley v. Sec’y, U.S. Dep’t of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987). Whether a court has jurisdiction is a threshold matter in every case. *See Steel Co. v. Citizens for a Better Env’t*, 523

¹ Apart from being unresponsive to the United States’ motion to dismiss, there was no provision in the RCFC permitting the filing of these documents and the documents were not in compliance with Chief Judge Margaret M. Sweeney’s March 18, 2020, General Order, (ECF No. 6). As such, these documents were returned to Wilson unfiled. (*See* ECF Nos. 10, 12).

U.S. 83, 94–95 (1998). “If the Court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” RCFC 12(h)(3).

To fall within this Court has jurisdiction, claims against the United States must be filed within six years after such claim accrues. 28 U.S.C. § 2501; *see also John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 133–135 (2008) (holding that § 2501’s limitations period prescribes a jurisdictional limit to the Court of Federal Claim’s ability to adjudicate claims against the United States, cannot be waived, and may not be equitably tolled). Under § 2501, a claim first accrues “when all the events have occurred that fix the alleged liability of the government and entitle the claimant to institute an action.” *Hopland Band of Pomo Indians v. United States*, 855 F.2d 1573, 1576-77 (Fed. Cir. 1988).

Here, Wilson alleges that the United States and former President Bill Clinton used his intellectual property without his permission. (Compl. at 2). However, Wilson does not state when this wrong allegedly occurred. To fall within this Court has jurisdiction, claims against the United States must be filed within six years after such claim accrues. 28 U.S.C. § 2501; *see also John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 133–135 (2008). As Wilson has not stated when this alleged wrong occurred, Wilson has failed establish subject-matter jurisdiction in this Court. *See Reynolds*, 846 F.2d at 748. Accordingly, the Court hereby **GRANTS** the United States’ motion to dismiss pursuant to RCFC Rule 12(b)(1). As such, the United States’ alternative theory of dismissal under RCFC Rule 12(b)(6) is moot.

The Clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.

David A. Tapp
DAVID A. TAPP, Judge

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v.

UNITED STATES,
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2020-1949

Appeal from the United States Court of Federal
Claims in No. 1:20-cv-00130-DAT, Judge David A. Tapp.

ON PETITION FOR PANEL REHEARING

Before REYNA, WALLACH, and CHEN, *Circuit Judges*.

PER CURIAM.

ORDER

The court construes Appellant Frederick Demond Wilson's October 16, 2020 filing as a petition for panel rehearing.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The mandate of the court will issue on November 16, 2020.

FOR THE COURT

October 23, 2020
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court