

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1234

WILLIAM J. TRENGOVE, JR.,
Appellant

v.

UNITED STATES DEPARTMENT OF JUSTICE

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 2-23-cv-00941)
District Judge: Honorable Jamel Semper

Submitted Pursuant to Third Circuit LAR 34.1(a)
September 3, 2024

Before: BIBAS, PORTER, and MONTGOMERY-REEVES, Circuit Judges

(Opinion filed September 17, 2024)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

APPENDIX D

Pro se appellant William Trengove, Jr., appeals the District Court's order granting Appellee's motion to dismiss his complaint for lack of subject matter jurisdiction. For the following reasons, we will affirm the judgment of the District Court.

I.

In February 2023, pro se appellant William Trengove, Jr. filed a complaint alleging that the Department of Justice ("DOJ") was negligent in failing to investigate and charge the healthcare providers that he claims were responsible for the death of his mother. Trengove contends that he presented evidence establishing that the providers were guilty of murder, but that the DOJ took no action. He sought \$1 billion in damages. In response, the Government moved to dismiss the case for want of jurisdiction. The Government argued that Trengove's claims could be brought only under the Federal Tort Claims Act ("FTCA"), but that such claims were barred by the discretionary-function exception and that Trengove had not exhausted his administrative remedies as required by the FTCA. The District Court agreed and dismissed the complaint. This appeal followed.

II.

We have jurisdiction under 28 U.S.C. § 1291. We exercise plenary review over the District Court's order. See Rinaldi v. United States, 904 F.3d 257, 264 (3d Cir. 2018).

III.

"Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit." FDIC v. Meyer, 510 U.S. 471, 475 (1994); Santos v. United States, 559 F.3d 189, 193 (3d Cir. 2009). The FTCA, which is the exclusive avenue to relief in a

case like this, see Vanderklok v. United States, 868 F.3d 189, 201 (3d Cir. 2017), waives the United States' immunity for "injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission" of a federal employee "acting within the scope of his office or employment," 28 U.S.C. § 1346(b)(1).

The FTCA's waiver of sovereign immunity, however, is limited by several exceptions. Relevant here, the waiver does not apply to tort claims arising from a federal employee's acts or omissions involving the exercise of certain discretionary duties or functions. 28 U.S.C. § 2680(a). This exception applies if the Government can show "(1) its agent's action involved an element of judgment or choice, and (2) its agent's judgment was of the kind that the exception was designed to shield, meaning that it was susceptible to policy analysis." Clark v. Sec'y of U.S. Navy, 102 F.4th 658, 661 (3d Cir. 2024) (cleaned up).

We agree with the District Court that this exception applies here. As we have previously recognized, "[t]he extent and scope of an investigation remains a matter of the agency's discretion." Baer v. United States, 722 F.3d 168, 174 (3d Cir. 2013) (quoting Gen. Pub. Utils. Corp. v. United States, 745 F.2d 239, 245 (3d Cir. 1984)); see also Bernitsky v. United States, 620 F.2d 948, 955 (3d Cir. 1980) ("Decision making as to investigation and enforcement . . . are discretionary judgments."); Kelly v. United States, 924 F.2d 355, 362 (1st Cir. 1991) ("Since decisions to investigate, or not, are at the core of law enforcement activity, the bureau chiefs' challenged conduct involved precisely the kind of policy-rooted decisionmaking that section 2680(a) was designed to safeguard."). Indeed, as the Supreme Court has stressed in a slightly different context, "an agency's

decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion." Heckler v. Chaney, 470 U.S. 821, 831 (1985). And, while Trengove says that the DOJ acted wrongly here, this exception applies "whether or not the discretion involved be abused." 28 U.S.C. § 2680(a). Accordingly, the District Court correctly concluded that the Government's sovereign immunity barred Trengove's claim.

Trengove also contends that the District Judge was biased against him because the judge had previously been employed by the DOJ. However, because he made no showing that the District Judge had any prior involvement in the incidents giving rise to the claim, recusal was not necessary. See United States v. Di Pasquale, 864 F.2d 271, 279 (3d Cir. 1988).

Accordingly, we will affirm the judgment of the District Court.

UNITED STATES COURT OF APPEALS
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Submitted Pursuant to Third Circuit LAR 34.1(a)
September 3, 2024

Before: BIBAS, PORTER, and MONTGOMERY-REEVES, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit LAR 34.1(a) on September 3, 2024.

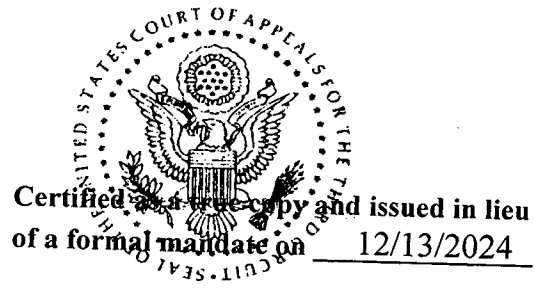
On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the judgment of the District Court entered January 19, 2024, be and the same is hereby affirmed. Each side to bear its own costs. All of the above in accordance with the opinion of this Court.

APPENDIX A

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: September 17, 2024



Teste: *Patricia S. Dodszuweit*
Clerk, U.S. Court of Appeals for the Third Circuit

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

WILLIAM J. TRENGROVE, JR.,

Plaintiff,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 23-00941(JKS)(JBC)

WHEREAS OPINION

January 18, 2024

SEMPER, District Judge.

THIS MATTER having come before this Court upon the filing of Defendant Department of Justice's ("Defendant") Motion to Dismiss *pro se* Plaintiff William J. Trengrove Jr.'s ("Plaintiff") Complaint, (ECF 1), pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(1), (ECF 15), and the Court having considered the Complaint and Defendant's and Plaintiff's submissions,¹ and having reached its decision without oral argument pursuant to Rule 78; and

WHEREAS Plaintiff's Complaint alleges claims that stem from his mother's personal injuries and death and arise under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b)(1), 2671–2680 (*see* ECF 1-1; ECF 16-1); and

WHEREAS *pro se* complaints, although "[held] to less stringent standards than formal pleadings drafted by lawyers," *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), must still "state a plausible claim for relief." *Yoder v. Wells Fargo Bank, N.A.*, 566 F. App'x. 138, 141 (3d Cir.

¹ Plaintiff's Opposition to the Motion to Dismiss (ECF 16-1) also included a Motion for Summary Judgment. In light of this Court's decision on the Motion to Dismiss, Plaintiff's Motion for Summary judgment is moot.

APPENDIX I

2014) (quoting *Walker v. Schult*, 717 F.3d 119, 124 (2d Cir. 2013)); *Martin v. U.S. Dep't of Homeland Sec.*, No. 17-3129, 2017 WL 3783702, at *3 (D.N.J. Aug. 30, 2017); and

WHEREAS “the United States, as sovereign, is immune from suit save as it consents to be sued . . . , and the terms of its consent to be sued in any court define that court’s jurisdiction to entertain the suit.” *United States v. Mitchell*, 445 U.S. 535, 538 (1980) (quoting *United States v. Sherwood*, 312 U.S. 584, 586 (1941)). The FTCA, which provides the exclusive remedy for tort claims against the United States, is a limited waiver of sovereign immunity, *Santos v. United States*, 559 F.3d 189, 193 (3d Cir. 2009), subject to enumerated exceptions. 28 U.S.C. § 2680. Pursuant to the discretionary function exception, the United States is immune from FTCA claims that arise from a federal employee’s acts or omissions involving certain discretionary duties or functions. 28 U.S.C. § 2680(a). Here, Defendant had the discretion to decide whether to allocate resources to pursue charges for the crimes Plaintiff alleged. *See Baer v. United States*, 722 F.3d 168, 175 (3d Cir. 2013) (“Whether to pursue a lead, to request a document, or to assign additional examiners to an investigation are all discretionary decisions, which necessarily involve considerations of, among other things, resource allocation and opportunity costs.”); and

WHEREAS Plaintiff was required to exhaust administrative remedies and assert in the Complaint that such administrative remedies have been exhausted. 28 U.S.C. § 2675(a) (“An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail.”). Plaintiff, however, did not satisfy the administrative exhaustion requirement. *White-Squire*

v. *U.S. Postal Serv.*, 592 F.3d 453, 458 (3d Cir. 2010) (“[A] claimant’s failure to present [his] FTCA claim to the appropriate agency with a sum certain, as required by § 2675(b), compels the conclusion that a district court lacks subject matter jurisdiction over the claim.”); and

WHEREAS Plaintiff’s mother died on January 30, 2020. A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented. 28 U.S.C. § 2401(b). Therefore, Plaintiff’s time to present his claim to the Department of Justice expired on January 30, 2022, such that permitting an amendment to the Complaint would be futile; therefore,

IT IS, on this 18th day of January 2024,

ORDERED that Plaintiff’s Complaint is **DISMISSED WITH PREJUDICE** for a lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). An appropriate order follows.

/s/ Jamel K. Semper
HON. JAMEL K. SEMPER
United States District Judge

Orig: Clerk
cc: Parties
James B. Clark, U.S.M.J.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

WILLIAM J. TRENGROVE, JR.,

Plaintiff,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 23-00941(JKS)(JBC)

ORDER

January 18, 2024

SEMPER, District Judge.

This matter having come before this Court upon the filing of Defendant Department of Justice's ("Defendant") Motion to Dismiss *pro se* Plaintiff William J. Trengrove Jr.'s ("Plaintiff") Complaint, (ECF 1), pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(1), (ECF 15), and the Court having considered Defendant's and Plaintiff's submissions and the Complaint for sufficiency pursuant to Rule 12(b)(1), for the reasons stated in this Court's Whereas Opinion dated January 18, 2024,

IT IS, on this 18th day of January 2024,

ORDERED that Defendant's Motion is **GRANTED**, and Plaintiff's Complaint is **DISMISSED WITH PREJUDICE**.

/s/ Jamel K. Semper

HON. JAMEL K. SEMPER

United States District Judge

Orig: Clerk

cc: James B. Clark, U.S.M.J.

Parties

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1234

WILLIAM J. TRENGOVE, JR.,
Appellant

v.

UNITED STATES DEPARTMENT OF JUSTICE

(D.C. Civil Action No. 2-23-cv-00941)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge; JORDAN, HARDIMAN, KRAUSE, RESTREPO,
BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, and
CHUNG, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having
been submitted to the judges who participated in the decision of this Court and to all the
other available circuit judges of the circuit in regular active service, and no judge who
concurred in the decision having asked for rehearing, and a majority of the judges of the
circuit in regular service not having voted for rehearing, the petition for rehearing by the
panel and the Court en banc, is denied.

APPENDIX C

BY THE COURT,

s/ Tamika R. Montgomery-Reeves
Circuit Judge

Date: December 5, 2024

CJG/cc: William J. Trengove, Jr.
Angela Juneau, Esq.
J. Andrew Ruymann, Esq.

**Additional material
from this filing is
available in the
Clerk's Office.**