

4/4/12 11cv2007 Deas motion

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED

VIDA DEAS,
plaintiff,

v.

UNITED STATES OF AMERICA,
defendant.

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PRISONER COURT

Case No. 3:11-cv-2007(AVC)

RULING ON MOTION TO AMEND JUDGMENT

The plaintiff is incarcerated at the low security Correctional Institution Allenwood, in White Deer, Pennsylvania. He filed a complaint pro se seeking declaratory and injunctive relief. On February 3, 2012, the court dismissed the complaint, directing the plaintiff to address his issues on direct appeal of his criminal conviction or by motion to vacate his sentence filed pursuant to 28 U.S.C. § 2255. The plaintiff now asks the court to amend the judgment or, in the alternative, to award him relief from judgment. For the reasons that follow, the plaintiff's motion is denied.

Federal Rule of Civil Procedure 59 allows the court to alter or amend a judgment. Section 59(e) requires that the motion be filed within twenty-eight days from the entry of judgment. As the motion was timely filed, the court considers the motion under Rule 59(e), rather than under Rule 60(b).

Under Rule 59(e), a party may ask the court to reconsider a judgment. "The standard for granting such a motion is strict, and reconsideration will generally be denied unless the moving

party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." Shrader v. CSX Transp. Inc., 70 F.3d 255, 257 (2d Cir. 1995). "It is well-settled that Rule 59 is not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a 'second bite at the apple'" Sequa Corp. v. GBJ Corp., 156 F.3d 136, 144 (2d Cir. 1998) (citing United States v. Local 1804-1, 831 F. Supp. 167, 169 (S.D.N.Y. 1993)).

The plaintiff challenges the court's decision on four grounds. First, the plaintiff states that the court improperly construed the complaint as filed pursuant to 42 U.S.C. § 1983 or Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). This statement is incorrect. Nowhere in the initial review order does the court state that the action was filed pursuant to section 1983 or Bivens. In addition, section 1983, which applies to state actors, is inapplicable in this case because the plaintiff has not named any state official as a defendant. See 42 U.S.C. § 1983 (allowing a cause of action if person acting under color of state law violated plaintiff's constitutionally or federally protected rights). Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), which applies to federal

officials, is also inapplicable as the only named defendant is the United States.¹

Second, the plaintiff states that the court overlooked his request for declaratory relief pursuant to 28 U.S.C. § 2201(a). The purpose of declaratory relief is "to settle legal rights and remove uncertainty and insecurity from legal relationships without awaiting a violation of the rights or a disturbance of the relationships." Beacon Constr. Co., Inc. v. Matco Elec. Co., Inc., 521 F.2d 392, 397 (2d Cir. 1975) (internal quotation marks and citation omitted). The district court has discretion to determine whether to entertain an action seeking a declaratory judgment, even where the action otherwise satisfies the prerequisites for subject matter jurisdiction. See Wilton v. Seven Falls Co., 515 U.S. 277, 282 (1995).

In his fourteenth cause of action, the plaintiff appears to ask the court to determine that his conviction is invalid. A determination of the validity of a conviction is properly brought through a direct appeal of the conviction. As the validity of the plaintiff's challenges to his conviction would be litigated in a direct appeal, it is not necessary for the court to entertain the same claims in a separate civil action. See AFT Rail Group, LLC v. Siemens Transp. Systems, Inc., No. 08-CV-6442,

¹ Under Bivens, a person injured by a federal agent's violation of a constitutional right may bring an action for damages against the agent. 403 U.S. at 389.

2009 WL 5216960, at *6 (W.D.N.Y. Dec. 30, 2009) (noting purposes of Declaratory Judgment Act and finding that court need not entertain action for declaratory relief where issues necessarily will be addressed in another action). In addition, the validity of the plaintiff's conviction and sentence does not involve the adjudication of legal rights or relationships, such as those found in contract claims. Thus, the plaintiff's claim is not within the purview of the Declaratory Judgment Act.

Third, the plaintiff argues that sovereign immunity was waived by 5 U.S.C. § 702 and the Administrative Procedures Act ("APA"), 5 U.S.C. § 701, et seq. The plaintiff is correct that the APA "confers a general cause of action upon persons 'adversely affected or aggrieved by agency action within the meaning of a relevant federal statute.'" Block v. Community Nutrition Institute, 467 U.S. 340, 345 (1984) (quoting 5 U.S.C. § 702). Judicial review under the APA is limited, however, "to 'agency action made reviewable by statute' and 'final agency action for which there is no other adequate remedy in a court.'" Serotte, Reich & Wilson, LLP v. Montante, No. 05-CV-284S, 2009 WL 3055294, at *5 (W.D.N.Y. Sept. 21, 2009) (quoting 5 U.S.C. § 704).



In his thirteenth cause of action, the plaintiff states his APA claim. He alleges that two assistant United States Attorneys were personally responsible for the alleged errors in his

indictment, conviction and sentence. The plaintiff has identified no statute affording review of their actions. Further, the relief the plaintiff seeks is directed to his conviction and sentence, not the specific actions of either AUSA. Although their actions may have contributed to the result, the judiciary was responsible for the conviction and sentence and the correctness of the conviction and sentence may be addressed on direct appeal. Thus, the plaintiff has not identified any final agency action unreviewable in any court proceeding to support an APA claim.

Finally, the plaintiff argues that he can seek an order directing the United States Attorney to bring criminal charges against Special Agent Bornstein under 28 U.S.C. § 1361. The plaintiff is incorrect. The district court's jurisdiction under the mandamus statute is limited to actions "seeking to compel the performance of a non discretionary duty." Duamutef v. INS, 386 F.3d 172, 180 (2d Cir. 2004). The plaintiff cannot obtain mandamus relief to order the government to perform a discretionary act, such as convening a grand jury to assert criminal charges against any individual. In addition, the court correctly stated that the plaintiff has no constitutionally cognizable interest in the prosecution of Special Agent Bornstein. See S. v. D., 410 U.S. 614, 619 (1973) (holding that "a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another").

The court concludes that there is no merit to the plaintiff's challenges to the court's order dismissing the complaint. Accordingly, the plaintiff's motion [Doc. #9] is **DENIED.**

SO ORDERED this 4th day of ^{April}~~March~~ 2012, at Hartford, Connecticut.

Alfred V. Covello
United States District Judge