

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DAVID DAHLER,

Plaintiff,

v.

MEMORANDUM and ORDER
05-C-463-S

UNITED STATES OF AMERICA,

Defendant.

Plaintiff David Dahler filed this action under the Federal Tort Claims Act against the Bureau of Prison for the loss of his personal property following a search of his housing unit. He alleges that two pair of tennis shoes, three grey t-shirts and one grey sweatshirt were confiscated.

Defendant moves to dismiss plaintiff's complaint for lack of subject matter jurisdiction. This motion has been fully briefed and is ready for decision.

FACTS

The following facts alleged in plaintiff's complaint are taken as true for purposes of deciding defendant's motion to dismiss.

Plaintiff David Dahler is an inmate at the Federal Correctional Institution, Oxford, Wisconsin. On February 23, 2005 a search of plaintiff's housing unit was conducted while he was at

work. Two pairs of tennis shirts, three t-shirts and one sweatshirt had been confiscated during the search by a Bureau of Prisons employee.

On June 6, 2005 the Bureau of Prison denied plaintiff's administrative tort claim.

MEMORANDUM

Defendant argues that this Court lacks subject matter jurisdiction of plaintiff's claim because the Federal Tort Claims Act excludes claims arising from the detention of property by any other law enforcement officers. The current statute, 28 U.S.C. § 2680(c), which was amended in April 2000, provides that the following is exempt from the Federal Tort Claims Act:

Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods, merchandise, **or other property** by any officer of customs or excise or any other law enforcement officer...

In 2003 the United States Court of Appeals for the Seventh Circuit addressed the wording of the previous statute which was in effect in 1999 when a prisoner claimed his property was confiscated. Ortloff v. U.S., 335 F. 3d 652, 657 (7th Cir. 2003). The Court held that the previous wording of the exemption, "any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law enforcement

officers," applied only to law enforcement officers performing custom or excise functions.

The deprivation of plaintiff's property occurred four years after the statute was amended to include the phrase "other property". The United States Court of Appeals for the Seventh Circuit has not ruled on whether this change in the exemption statute applies to deprivations of property by prison officials. Three circuits have concluded that the change in the statute extends the exemption to law enforcement officers which include Bureau of Prison employees. See Bramwell v. U.S. Bureau of Prison, 348 F. 3d 804, 807 (9th Cir. 2003, cert. denied, 125 S.Ct. 45 (2004); Chapa v. United States Dep't of Justice, 339 F.3d 388, 390 (5th Cir. 2003) and Hatten v. White, 275 F.3d 1208, 1210 (10th Cir. 2002).

The Court is persuaded by the reasoning in these cases that the current statute exempts claims for deprivation of property by prison guards from the Federal Tort Claims Act. Accordingly, this Court lacks subject matter jurisdiction of plaintiff's claim and it will be dismissed with prejudice.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

Defendant moves to amend this Court's scheduling order. This motion will be dismissed as moot.

ORDER

IT IS ORDERED that defendant's motion to dismiss plaintiff's complaint is GRANTED.

IT IS FURTHER ORDERED that the above entitled matter is DISMISSED with prejudice for lack of subject matter jurisdiction.

IT IS FURTHER ORDERED that defendant's motion to amend the scheduling order is DENIED as moot.

Entered this 20th day of December, 2005.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge