

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

CHARGING HAWK,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER

07-C-150-C

This is a civil action for declaratory and monetary relief, brought pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671 – 2680. Plaintiff, who is presently confined at the Federal Correctional Institution in Oxford, Wisconsin, alleges that defendant wrongfully confiscated his personal property worth \$346 sometime after he was placed in the special housing unit.

Presently before the court is defendant's motion to stay the proceedings pending the decision of the United States Supreme Court in Ali, Abdus-Shahid M.S. v. Federal Bureau of Prisons, et. al., 2007 WL 278844 (May 29, 2007). The Supreme Court granted a writ of certiorari in that case on May 29, 2007; presumably, a decision will be released before the end of the Supreme Court's next term. The question presented in Ali, Abdus-Shahid M.S.

is whether an exception to the Federal Tort Claims Act's general waiver of sovereign immunity applies to prison officials, a question that must be answered implicitly in the resolution of plaintiff's case.

The Federal Tort Claims Act waives the United States' sovereign immunity and renders the United States liable in damages for the

negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. 1346(b)(1). Congress, however, excluded expressly from that waiver of liability several types of claims, including "[a]ny claim arising in respect of . . . the detention of any goods, merchandise, or other property by any officer of customs or excise or any other law enforcement officer." 28 U.S.C. 2680(c).

Currently, ten courts of appeal have weighed in on the question and have reached inconsistent answers. However, the Court of Appeals for the Seventh Circuit has held consistently and recently that the exception to the waiver of sovereign immunity under § 2680(c) does not apply to prison officials. See, e.g., Dahler v. United States, 473 F.3d 769 (7th Cir. 2007), Ortloff v. United States, 335 F.3d 652 (7th Cir. 2003). This court has taken that position as well. Bigbee v. United States, No. 05-C-66-C, 2005 WL 1530278 (W.D. Wis., June 28, 2005).

Plaintiff filed his complaint months before the Supreme Court agreed to hear Ali, Abdus-Shahid M.S.; it would be unfair to put his case on hold for a lengthy period of time because of events outside his control. Although I recognize that the Supreme Court's decision could affect the outcome of the case, I am not inclined to stall its resolution, given the certainty regarding the law in this circuit and the potential for a year-long delay in reaching the merits of plaintiff's claim. Therefore, defendant's motion to stay the case will be denied.

ORDER

IT IS ORDERED that defendant's motion to stay all proceedings is DENIED.

Entered this 21st day of June, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge