

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-11508
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 2, 2018

Lyle W. Cayce
Clerk

PAPA HULUWAZU, formerly known as Craig Anthony Dillard,

Plaintiff – Appellant,

v.

SECRETARY OF THE AIR FORCE; FNU ROE I THROUGH X; FNU ROE
A-Z,

Defendants – Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:17-CV-77

Before DAVIS, COSTA, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Plaintiff, Papa Huluwazu, appeals the district court's dismissal of his complaint wherein he alleged that Defendants, the Secretary of the Air Force and numerous unnamed individuals and entities, violated his due process and double jeopardy rights. We AFFIRM the district court's judgment, and we DENY the Plaintiff's motion for appointment of pro bono counsel.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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I. BACKGROUND.

In his complaint, Plaintiff alleges that he is a disabled veteran of the United States Air Force. He asserts that during certain military disciplinary proceedings, his due process and double jeopardy rights were violated when he was required to serve “multiple sentences for the same event.”¹ He contends that his rights were further violated by “unlawful detainment, discrimination and wrongful termination.” Plaintiff asserts that, although he filed an appeal of the proceedings, his complaints “were never addressed in accordance with Air Force guidelines.” He contends that he is entitled to punitive damages and compensation “in accordance with the 1981 Uniform Code of Military Justice” and the “Air Force Separations Manual.”

Plaintiff further alleges that after he was terminated from the Air Force, he filed a claim for benefits with the Veterans Administration (“VA”) in June 1981. However, “[a]fter 33 years of red tape and delays,” the VA informed him in 2014 that it “did not have jurisdiction over [the] matter” and that there were “no resources available thr[ough] the [VA].” Plaintiff contends that his “claim was remanded back to the Board of Veterans Appeals three times and [the] Regional Office Veterans Claims (R.O.V.C.) in Reno, Nevada five times to be denied at every level.” He states that he then filed suit against the Air Force in federal district court in Nevada, but the district court dismissed his complaint for lack of jurisdiction.²

¹ Plaintiff does not describe “the event,” but states that it “happened in December 1980–May 1981.” He contends that the first sentence imposed consisted of confinement to the base for three months and fifteen days plus forfeiture of pay. He asserts that the second sentence resulted from an “article 15 court martial” and consisted of forty-five days of hard labor and “forfeiture of two strips,” such that his rank was “reduced from A1C to airman.”

² See *Huluwazu v. Air Force*, No. 2:15-cv-01295, 2016 WL 6997006, *1 (D. Nev. Nov. 29, 2016) (determining that Plaintiff’s “complaint involve[d] a challenge to [his] discharge from the Air Force and the [VA’s] denial of certain benefits” and adopting magistrate judge’s report and recommendation); *Huluwazu v. Air Force*, No. 2:15-cv-01295,

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After granting Plaintiff permission to proceed in forma pauperis, the magistrate judge in this proceeding issued a report recommending that Plaintiff's complaint be dismissed. Specifically, the magistrate judge determined that Plaintiff was raising "the same or similar matters that failed to establish jurisdiction [in federal district court] in Nevada."³ The magistrate judge further determined that any claim under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*⁴ was precluded by "the administrative remedial procedures in Title 38 [of the United States Code] and its associated VA regulations," and, in any event, would be untimely.

The magistrate judge's report, which was dated November 16, 2017, recommended that Plaintiff's complaint be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(h)(3) of the Federal Rules of Civil Procedure. As to any *Bivens* claims, the report alternatively recommended that those claims be dismissed as untimely. The magistrate judge's report further provided: "Any party who objects to any part of the Report and Recommendation must file specific written objections within 14 days after being served with a copy."

On December 4, 2017, noting that Plaintiff had failed to file a timely objection, the district court issued an order adopting the magistrate judge's report and recommendation. Two days later, on December 6, 2017, Plaintiff filed objections, styled as a "More Definite Statement," to the magistrate judge's report. Plaintiff contended that the Nevada federal district court did

2016 WL 7013515 (D. Nev. Mar. 10, 2016) (magistrate judge's report concluding that under Title 38 of the United States Code, federal district courts do not have jurisdiction to review the VA's decisions regarding veterans' benefits).

³ The Nevada district court determined that Title 38 provided "the exclusive procedural mechanisms" for a veteran to challenge the VA's decision regarding his disability benefits. See *Huluwazu*, 2016 WL 7013515, at *3.

⁴ 403 U.S. 388 (1971).

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not have jurisdiction over his claims because “the events took place” on the Dyass Air Force Base,⁵ and thus the “Abilene Texas United States District Court” was the court with jurisdiction over his claims. On December 7, 2017, the district court issued a judgment dismissing Plaintiff’s complaint with prejudice. Plaintiff timely appealed.

II. LAW and ANALYSIS.

In challenging the district court’s dismissal, Plaintiff argues that he should have been allowed more time, and actually believed he had twenty-one days, in which to file objections to the magistrate judge’s report. He argues that, even if his objections were untimely, the district court plainly erred in dismissing his complaint. He contends that the Northern District of Texas has jurisdiction over his complaint because that is “where the event took place.” Finally, Plaintiff asserts that any *Bivens* claim is timely because “[t]he period in question [is] 2014–2017.” As set forth below, these arguments are unavailing.

We review a dismissal for lack of subject matter jurisdiction *de novo*.⁶ As this Court has noted, the Veterans Judicial Review Act (“VJRA”)⁷ “preclude[s] review of [veterans’] benefits determinations in federal district courts.”⁸ The VJRA “create[s] an exclusive review procedure by which veterans may resolve their disagreements with the Department of Veterans Affairs.”⁹ Specifically, after the Secretary of the VA makes a benefits determination, the veteran may appeal that decision to the Board of Veterans’ Appeals and then

⁵ Dyass Air Force Base is located in Abilene, Texas.

⁶ *Zuspann v. Brown*, 60 F.3d 1156, 1158 (5th Cir. 1995); *King v. U.S. Dep’t. of Veterans Affairs*, 728 F.3d 410, 413 (5th Cir. 2013).

⁷ See 38 U.S.C. §§ 511, 7251.

⁸ *Zuspann*, 60 F.3d at 1158.

⁹ *Id.*

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to the Court of Veterans Appeals.¹⁰ If the appeal involves an issue of law, the veteran may then continue to appeal to the United States Court of Appeals for the Federal Circuit and finally to the Supreme Court.¹¹ Therefore, the district court correctly determined that it lacked subject matter jurisdiction over Plaintiff's claims regarding the VA's determination of benefits.

With respect to any *Bivens* claim, this Court has determined that “no *Bivens* remedy lies against the individual employees of the VA.”¹² Although the district court determined that it lacked jurisdiction over any *Bivens* action, we may affirm on any basis that is supported by the record.¹³ Because Plaintiff fails to state a claim upon which relief may be granted under *Bivens*, we affirm the district court's dismissal of such claim.¹⁴

Although not addressed by the district court, Plaintiff's complaint also included claims that his due process and double jeopardy rights were violated during certain military disciplinary proceedings. In the Uniform Code of Military Justice (“UCMJ”), Congress has set forth four methods for disposing of cases involving offenses by servicemen: the general, special, and summary courts-martial and non-judicial punishment administered by the accused's commanding officer pursuant to Article 15.¹⁵ Plaintiff alleges that he received “multiple sentences for the same event” as the result of “an article 15 court martial.” Much like the VJRA discussed above, however, the UCMJ does not allow for appeal of Article 15 punishments to a federal district court. Rather,

¹⁰ 38 U.S.C. §§ 7104, 7252.

¹¹ *Id.* § 7292.

¹² *Zuspann*, 60 F.3d at 1161.

¹³ *Id.* at 1160 (footnote and citation omitted).

¹⁴ *Id.*

¹⁵ *See* 10 U.S.C. §§ 815–816.

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a person punished under Article 15 may “appeal to the next superior authority.”¹⁶ Therefore, the district court lacked jurisdiction over this claim.

Plaintiff also alleges that after he served his sentences, his due process rights were further violated by various military personnel “under the color of law” through their “unlawful detainment, discrimination and wrongful termination [of him].” The Supreme Court has held, however, that “enlisted military personnel may not maintain a [*Bivens*] suit to recover damages from a superior officer for alleged constitutional violations.”¹⁷ Therefore, Plaintiff again fails to state a claim under *Bivens*.

Based on the foregoing, the district court’s judgment is AFFIRMED. Plaintiff’s motion for appointment of pro bono counsel is DENIED.

¹⁶ *Id.* § 815(e). Moreover, the Ninth Circuit has held that because a non-judicial punishment under Article 15 “is noncriminal in nature, it does not implicate the Double Jeopardy Clause.” *United States v. Reveles*, 660 F.3d 1138, 1146 (9th Cir. 2011).

¹⁷ *Chappell v. Wallace*, 462 U.S. 296, 305 (1983) (footnote omitted).