

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOSEPH A. WEAVER,)
)
)
Plaintiff,)
)
)
v.) No. 4:16CV468 JAR
)
)
UNITED STATES OF AMERICA,)
)
)
Defendant,)

MEMORANDUM AND ORDER

Plaintiff, a prisoner, seeks leave to proceed in forma pauperis in this civil action under 28 U.S.C. § 1495 for unjust conviction and imprisonment. Having reviewed plaintiff's financial information, the Court assesses a partial initial filing fee of \$21, which is twenty percent of his average monthly deposit. *See* 28 U.S.C. § 1915(b). Additionally, this action is dismissed for lack of jurisdiction.

Standard

Under Rule 12(h)(3) of the Federal Rules of Civil Procedure, the Court is required to dismiss an action if jurisdiction is lacking.

Discussion

Plaintiff pled guilty to felon in possession of a firearm, and the Court sentenced him to 110 months' imprisonment. *United States v. Weaver*, No. 4:13CR318 JAR. He did not appeal. He filed a § 2255 motion in 2015, which the Court denied with prejudice because it was barred by the statute of limitations. *Weaver v. United States*, No. 4:15CV437 JAR.

In the instant action, plaintiff seeks money damages on the basis that he had a right under the Second Amendment to possess the firearms.

Section 1495 provides that “The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim for damages by any person unjustly convicted of an offense against the United States and imprisoned.” Because the plain language of § 1495 indicates that claims for monetary relief must be sought in the United States Court of Federal Claims, the Court does not have jurisdiction to hear this case.

Moreover, a court does not have jurisdiction to hear a § 1495 case unless the requirements of 28 U.S.C. § 2513 are satisfied. *See Crowder v. United States*, No. 15-548C, 2015 WL 7074684 (Fed Cl.) (analyzing jurisdictional prerequisites). Under § 2513, a plaintiff cannot bring a § 1495 action unless the “conviction has been reversed or set aside on the ground that he is not guilty of the offense of which he was convicted . . .” Plaintiff’s conviction has not been set aside. Therefore, the Court lacks jurisdiction for this reason as well.

Accordingly,

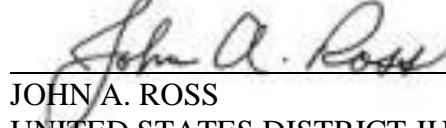
IT IS HEREBY ORDERED that plaintiff’s motion to proceed in forma pauperis [ECF No. 2] is **GRANTED**.

IT IS FURTHER ORDERED that the plaintiff must pay an initial filing fee of \$21 within thirty (30) days of the date of this Order. Plaintiff must make his remittance payable to “Clerk, United States District Court,” and to include: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that this action is **DISMISSED** without prejudice.

An Order of Dismissal will be filed separately.

Dated this 12th day of April, 2016.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE