

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-376

JANUARY TERM, 2003

	}	APPEALED FROM:
	}	
Edwin Towne, Jr.	}	Windham Superior Court
	}	
v.	}	DOCKET NO.98-2-02 Wmcv
	}	
State of Vermont	}	Trial Judge: Richard W. Norton
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Plaintiff Edwin Towne, Jr. appeals from the Windham Superior Court's order dismissing his case pursuant to Vermont Rules of Civil Procedure Rule 12(b)(6). Plaintiff maintains that the court erred because: (1) his case was filed under common law and state constitutional law, not pursuant to any Vermont statute or rule; (2) plaintiff won by default; and (3) plaintiff has no other remedy. We affirm.

In March 1983, plaintiff entered into a plea agreement with the State, allegedly conditioned on the State securing a dismissal of a 1979 New Hampshire fugitive warrant. The warrant was not dismissed, and it later served as the basis for an arrest of plaintiff. Plaintiff was subsequently charged and convicted of committing other crimes, including murder.

Plaintiff filed this action in superior court in February 2002, seeking damages for the State's alleged breach of the plea agreement. The court dismissed plaintiff's action under Rule 12(b)(6), explaining that: (1) damages were not an available remedy for the alleged breach of a plea agreement, and (2) even if the State had engaged in tortious misrepresentation, as plaintiff claimed, he had not suffered a legally cognizable injury. Plaintiff then appealed to this Court.

When reviewing the disposition of a Rule 12(b)(6) motion to dismiss, we assume that all factual allegations pled in the complaint are true. Richards v. Town of Norwich, 169 Vt. 44, 48-49 (1999). Our review of conclusions of law is nondeferential and plenary. Thompson v. Dewey's South Royalton, Inc., 169 Vt. 274, 276 (1999).

The trial court here correctly concluded that damages are not an available remedy for a breached plea agreement. Vermont law recognizes two alternative remedies for such a breach: specific enforcement of the agreement or allowance of a plea withdrawal. State v. Platt, 158 Vt. 423, 427 (1992); see also Santobello v. New York, 404 U.S. 257, 263 (1971). In this case, plaintiff sought \$140 million in damages for injuries allegedly suffered as a result of the breached plea agreement. This remedy is not available to him. Thus, the trial court correctly held that, to the extent plaintiff sought damages based on the State's breach, he failed to state a claim upon which relief could be granted. Therefore, plaintiff's claim was properly dismissed.

The trial court also correctly dismissed plaintiff's tort-based negligent misrepresentation claim. To recover damages on this claim, plaintiff needed to establish that the State's allegedly wrongful conduct proximately caused him actual, compensable injury. The United States Supreme Court has stated that a prisoner may not use the "injury" of being convicted and imprisoned to recover damages in a civil suit, unless his conviction has been invalidated. Heck v. Humphrey, 512 U.S. 477, 487 n.7 (1994). Consequently, a court "must consider whether a judgment in favor of the

plaintiff would necessarily imply the invalidity of his conviction and sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." Id. at 487. While Heck involved a prisoner's suit for damages under 42 U.S.C. § 1983, the Court noted that " 42 U.S.C. § 1983 creates a species of tort liability" and reached its holding by analogizing to the common law of torts. Id. at 483. Consequently, we find the principles embodied in Heck applicable here. Plaintiff argues that he is seeking damages for the breach of his plea agreement, rather than his subsequent convictions and imprisonment. However, plaintiff has alleged no injury other than his assertion that the State's breach directly resulted in his incarceration. Plaintiff acknowledges that his convictions have not been invalidated, and, in fact, remains incarcerated. Therefore, the trial court properly dismissed plaintiff's claim pursuant to Rule 12(b)(6).

To the extent plaintiff raises other arguments on appeal, the briefing is so inadequate that we cannot discern them and therefore do not address them. See V.R.A.P. 28(a)(4); State Farm Mut. Auto Ins. Co., v. Powers, 169 Vt. 230, 242 (1999).

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice