

United States Court of Appeals
For the Eighth Circuit

No. 20-3069

Matthew Staszak

Plaintiff - Appellant

v.

United States of America; Darlene Gallardo, Unit Manager, Individually and in
her official capacities

Defendants - Appellees

Appeal from United States District Court
for the Eastern District of Arkansas - Delta

Submitted: April 15, 2021
Filed: May 13, 2021
[Unpublished]

Before SHEPHERD, GRASZ, and KOBES, Circuit Judges.

PER CURIAM.

Federal inmate Matthew Staszak appeals the district court's¹ adverse judgment in his action under the Federal Tort Claims Act (FTCA) and Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). Upon de novo review, we affirm. See Smith v. Toyota Motor Corp., 964 F.3d 725, 728 (8th Cir. 2020); Montin v. Moore, 846 F.3d 289, 292 (8th Cir. 2017). We agree with the district court that Gallardo was not a proper defendant for the FTCA claims, see Duncan v. Dep't of Labor, 313 F.3d 445, 447 (8th Cir. 2002) (per curiam) (United States is proper defendant in FTCA claim); and that Staszak's lack of physical injury barred the FTCA claims against the United States, see 28 U.S.C. § 1346(b)(2) (person incarcerated while serving sentence for felony conviction may not bring civil action against United States for mental injury suffered in custody without showing prior physical injury).

We also agree that the Bivens claims failed. Sovereign immunity barred the Bivens claims against the United States, and against Gallardo in her official capacity. See Buford v. Runyon, 160 F.3d 1199, 1203 (8th Cir. 1998) (sovereign immunity bars Bivens action against United States). As to the individual-capacity claims against Gallardo, even assuming a Bivens remedy exists for violations of the Sixth Amendment, Staszak had no right to counsel in his 28 U.S.C. § 2255 proceeding, see Abdullah v. Hedrick, 392 F.3d 957, 964 (8th Cir. 2004) (there is no Sixth Amendment right to counsel in 28 U.S.C. § 2255 proceedings); and the due process claim was premised on the alleged Sixth Amendment violation, see Bishop v. Tice, 622 F.2d 349, 353 (8th Cir. 1980) (to state Fifth Amendment due process claim, plaintiff must allege deprivation of property or liberty interest).

¹The Honorable Kristine G. Baker, United States District Judge for the Eastern District of Arkansas, adopting the report and recommendations of the Honorable Patricia S. Harris, United States Magistrate Judge for the Eastern District of Arkansas.

The judgment is affirmed. See 8th Cir. R. 47B. We deny Staszak's motions for counsel.
