

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-11238

Non-Argument Calendar

DAVID HAWTHORNE,

Plaintiff-Appellant,

versus

SECRETARY OF THE ARMY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 5:21-cv-01278-LCB

Before JORDAN, BRASHER, and BLACK, Circuit Judges.

PER CURIAM:

David Hawthorne appeals *pro se* from the district court's dismissal of his complaint, brought under the Little Tucker Act, 28 U.S.C. § 1346(a)(2), in which he sought to rescind a settlement agreement he entered into with the Army. He asserts the district court erred in finding that it did not have jurisdiction to adjudicate his claim for equitable relief under the Little Tucker Act.

We have an obligation to review *sua sponte* whether we have jurisdiction at any point in the appellate process. *Reaves v. Sec'y, Fla. Dep't of Corr.*, 717 F.3d 886, 905 (11th Cir. 2013). We must resolve jurisdictional issues before addressing the merits of the underlying claims and may not exercise hypothetical jurisdiction to decide a case on the merits. *Friends of the Everglades v. E.P.A.*, 699 F.3d 1280, 1288 (11th Cir. 2012).

The Little Tucker Act “grants concurrent jurisdiction to both U.S. district courts and the Court of Federal Claims for contractual claims against the United States not exceeding \$10,000.” *See* 28 U.S.C. § 1346(a)(2); *Roberts v. United States*, 242 F.3d 1065, 1067–68 (Fed. Cir. 2001). It does not create a cause of action against the federal government; rather, it waives sovereign immunity for the claims described therein. 28 U.S.C. § 1346(a)(2). The Federal Circuit, however, has exclusive jurisdiction over appeals from final judgments of district courts in cases brought, in whole or in part,

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under the Little Tucker Act. 28 U.S.C. § 1295(a)(2); *Parker v. King*, 935 F.2d 1174, 1178 (11th Cir. 1991).

Whenever an appeal is filed in a court that lacks jurisdiction over the appeal, that court “shall, if it is in the interest of justice, transfer such action or appeal to any other such court . . . in which the action or appeal could have been brought at the time it was filed.” 28 U.S.C. § 1631. When “[i]t is clear from the record that the district court’s jurisdiction was based at least in part on 28 U.S.C. § 1346(a)(2), . . . this [C]ourt shall not dismiss the appeal but shall transfer it to the Federal Circuit.” *Oliveira v. United States*, 734 F.2d 760, 762 (11th Cir. 1984); *see also Parker*, 935 F.2d at 1178-79 (transferring appeal to the Federal Circuit).

Hawthorne brought his claim, in part, under the Little Tucker Act. Accordingly, we conclude that, under 28 U.S.C. § 1295(a)(2), we lack jurisdiction, and transfer this appeal to the United States Court of Appeals for the Federal Circuit pursuant to 28 U.S.C. § 1631.

TRANSFERRED.