

Inmate's Novel "Breach of Contract"

Claim Fails

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In *Barnes v. Thomas Gibbons, Madison County State's Attorney*, (No.5-19-0415, IL App (5th), Oct. 26, 2001), the plaintiff, Diamond Barnes, appealed from an order of the circuit court dismissing his "breach of contract" complaint against Gibbons (our client). The contract action arose following the plaintiff's conviction for first-degree murder in 2009 in the Circuit Court of Madison County. The weapon used in the murder was a 9-millimeter handgun the plaintiff owned and had a permit to carry (issued by the State of Virginia). In his complaint, the plaintiff asserted that Gibbons, in his investigative capacity as a prosecutor in the murder case, breached the existence of a valid and enforceable written contract.

What was the "contract"? According to the plaintiff, it was the permit issued by the State of Virginia that allowed the plaintiff to carry and lawfully conceal his handgun—the one used in the murder. The plaintiff claimed he incurred a loss of liberty and claimed damages for loss of income.

Trial Court Dismisses Claim

The trial court entered an order granting Gibbons' motion to dismiss the plaintiff's complaint with prejudice pursuant to section 2-619. The trial court found the plaintiff failed to allege the existence of a valid and enforceable contract between the plaintiff and Gibbons because Gibbons was not a party to the permit issued by the State of Virginia. The trial court also construed the plaintiff's claims on loss of liberty and economic loss as asserting civil rights violations under 42 U.S.C. § 1983. The trial court found the collateral attack doctrine was dispositive of these claims because the plaintiff's murder conviction had not been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal, or called into question by a federal court's issuance of a writ of *habeas corpus*. As such, the plaintiff had no cause of action. The trial court also found Gibbons' acts were protected by prosecutorial immunity. The plaintiff appealed.

Appellate Court Affirms

On appeal, the Fifth District of the Illinois Appellate Court affirmed the trial court's findings and dismissal with prejudice. The appellate court agreed with our Appellate Team's arguments that the plaintiff failed to demonstrate a contract existed between the plaintiff and Gibbons, or that there was a "third-party beneficiary" to the contract between the plaintiff and the State of Virginia. The appellate court also agreed that the plaintiff's claims relating to loss of liberty were section 1983 claims, which were banned by the collateral attack doctrine. That doctrine states that a prisoner has no cause of action under section 1983 unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned. The appellate court further agreed with our Appellate Team's argument that Gibbons had immunity. In addition, the court found the trial court did not abuse its discretion by refusing to enter a default judgment against Gibbons (for allegedly filing a late responsive pleading), or by refusing to issue a writ for the plaintiff, a prisoner, to appear in person in the courtroom.