United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5189 **September Term, 2010**

FILED ON: APRIL 21, 2011

GREGORY N. DUCKWORTH, ET AL.,

APPELLANTS

v.

UNITED STATES OF AMERICA, ACTING BY AND THROUGH, GARY LOCKE,
IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE DEPARTMENT OF COMMERCE, ET AL.,

APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:09-cv-01387)

Before: ROGERS, TATEL and KAVANAUGH, *Circuit Judges*

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. *See* Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court's grant of summary judgment be affirmed.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Jennifer M. Clark
Deputy Clerk

MEMORANDUM

On appeal from the grant of summary judgment, Gregory N. Duckworth (and his two former commercial fishing vessels) challenge the imposition of a $100,000 fine and 48 months' suspension of his commercial fisherman's vessel and operator permits pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 ff. The district court's opinion sets out the underlying facts. *Duckworth v. United States ex rel. Locke*, 705 F. Supp. 2d 30, 34-39 (D.D.C. 2010). Suffice it to say, the sanctions were imposed for conduct in 2006 following prior violations of the Act in 2002, 2003, and 2005. The latter violations were settled and a $50,000 fine imposed for a 2002 violation; Duckworth failed to pay the fine by the August 1, 2006 deadline and his permits were suspended until the fine was paid. The 2006 conduct involved eight violations concerning Duckworth's fishing with suspended permits and an April 2006 false statement in his application to renew the permit for one of his boats. An administrative law judge, after a trial-like hearing, discredited Duckworth's explanations, imposed the maximum statutory fines ($130,000 for each violation), and permanently revoked his permits. Upon discretionary review, the Administrator of the National Oceanic and Atmospheric Administration reduced the total fines to $100,000 and the permanent revocation to 48 months' suspension.

Duckworth now challenges the fine and suspension, without challenging the underlying fact finding, on three grounds: the Administrator's decision was arbitrary and capricious; the Inspector General's Report supported his claim of excessiveness; and the sanctions were excessive because his case should be treated like a maritime case. None is persuasive.

1. Each decision maker made findings based on statutory factors. Duckworth's contention that there was no fact finding or opportunity for him to challenge the sanctions is belied by the record. He relies on internal, non-binding civil penalty guidelines, *see, e.g., Pharaon v. Bd. of Governors of Fed. Reserve Sys.*, 135 F.3d 148, 156 (D.C. Cir. 1998), but does not show the final decision was inconsistent with the guidelines. The government responds as well that the sanctions were reasonable given the seriousness of the violations, Duckworth's prior history of violations, his culpability as shown by his intentional submission of a forged document, and his ability to pay.

2. The Inspector General Report, indicating administrative management controls were needed and the high fines imposed in the Northeast region where Duckworth fishes were excessive, was issued two months after the Administrator's final decision, and, in any event, did not address specific cases. Duckworth can show no abuse of discretion by the district court in failing to supplement the record with the Report. *See, e.g., Am. Wildlands v. Kempthorne*, 530 F.3d 991, 1002 (D.C. Cir. 2008).

3. In contending the sanction was constitutionally excessive, Duckworth relies on Supreme Court precedent addressing punitive damages awarded by juries in tort cases. He is incorrect in arguing his is a maritime case governed by federal common law; the sanction is governed by statute and its regulations. His reliance on *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 489-515 (2008), is misplaced. In that case, the Supreme Court addressed "punitive damages in maritime law, which falls within a federal court's jurisdiction to decide in the manner of a common law court, subject to the authority of Congress to legislate otherwise if it disagrees with the judicial result," *id.* at 489-90, and held that a *jury's* award of punitive damages may not exceed the amount of compensatory

damages in a federal maritime case, *id.* at 513. This case, however, involves a civil penalty authorized by the Magnuson-Stevens Act and its regulations, *see* 16 U.S.C. § 1858(a); 15 C.F.R. § 6.4 (f)(14) (2007), rather than a punitive damages jury award, thus rendering the *Exxon* 1:1 ratio rule inapplicable. For the same reason, Duckworth's citation to other decisions setting forth punitive damages tests, *see State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996), is unavailing.

Duckworth's due process argument, appropriately viewed, falls under the Excessive Fines Clause of the Eight Amendment. *See Tri County Indus., Inc. v. Dist. of Columbia*, 104 F.3d 455, 459 (D.C. Cir. 1997) ("Where a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process must be the guide for analyzing these claims." (citations and internal quotation marks omitted)). Citing *United States v. Bajakajian*, 524 U.S. 321, 334 (1998), Duckworth correctly observes that "[t]he amount of the [penalty] must bear some relationship to the gravity of the offense that it is designed to punish." But he fails to show the lack of such a relationship in his case, upon *de novo* review. *See id.* at 336. With respect to the $100,000 civil penalty, "[t]he amount [of the fine] is neither indefinite nor unlimited," *Grid Radio v. FCC*, 278 F.3d 1314, 1322 (D.C. Cir. 2002), and "the penalty is proportional to [the] violation and well below the statutory maximum," *Pharaon*, 135 F.3d at 157. The final amount of the civil penalty as reduced by the Administrator was less than ten percent of the $1.04 million statutory maximum authorized at the time. *See* 16 U.S.C. § 1858(a); 15 C.F.R. § 6.4(f)(14) (2007). Although the permit suspensions were intended to "act as a deterrent," *F/V Twister, Inc*., 2009 WL 4829742 (NOAA App. Nov. 24, 2009), and "[d]eterrence . . . has traditionally been viewed as a goal of punishment," *Bajakajian*, 524 U.S. at 329, the permit suspensions were constitutionally permissible because they were not "grossly disproportional to the gravity of [Duckworth's] offense[s]," *id*. at 334. To the extent Duckworth's challenge sounds in procedural due process, that claim likewise fails: "Because the assessed penalty falls far below the statutory maximum, [Duckworth] cannot claim that he lacked constitutionally adequate notice." *Pharaon*, 135 F.3d at 157.