

STATE OF VERMONT
WASHINGTON COUNTY

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In re DAVID TOWER, JR.,

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Washington Superior Court

Docket No. 628-10-06 Wicy

SUPERIOR COURT
WASHINGTON COUNTY

DECISION
State's Motion to Dismiss

In the complaint, Plaintiff David Tower, Jr., generally alleges that the Vermont Criminal Information Center (VCIC), 20 V.S.A. §§ 2051–2063, has disseminated information indicating that he was convicted of a felony in 1974 without possessing any “original or certified records” to support that information. He asserts that the court has jurisdiction over this case pursuant to Rule 75, and seeks an injunction prohibiting any further dissemination of this information. The State, interpreting the complaint as setting out a claim for expungement, seeks dismissal, arguing that this claim is not properly brought under Rule 75. In response, Petitioner affirms that he specifically seeks Rule 75 review, and he does not seek expungement.

Rule 75 does not create jurisdiction; it merely “provides a procedure applicable whenever county court review . . . is available as a matter of general law by proceedings in the nature of certiorari, mandamus, or prohibition.” Reporter’s Notes, V.R.C.P. 75; see also V.R.C.P. 81(b) (abolishing the extraordinary writs). “It provides a simpler review procedure than that by appeal on the record under Rule 74 for state agency determinations that are not ‘contested cases’ within the meaning of the [APA] and for most reviewable determinations of local governmental bodies.” Reporter’s Notes, V.R.C.P. 75.

There must be an “action or failure or refusal to act” by a governmental body in order to the court to review governmental action under Rule 75. The complaint does not identify such an action on the part of VCIC. There is no allegation that Plaintiff has made any request to VCIC to take action, or has been the subject of any administrative proceeding. He does not claim to have been denied a copy of his criminal history record or criminal conviction record, or a statement that VCIC possesses no such records. See 20 V.S.A. § 2056f. There is no record of action for the court to review. Thus, there appears to be no cognizable controversy falling within Rule 75.

ORDER

Plaintiff shall have ten days to file an amended complaint alleging a governmental action for which he seeks Rule 75 review. If none is filed, the State’s motion to dismiss will be granted.

Dated at Montpelier, Vermont this 14th day of March 2007.

Mary Miles Teachout
Mary Miles Teachout
Superior Court Judge