

2000 U.S. Dist. LEXIS 6805, \*

**WILLIAM J. BENSON, Plaintiff, v. JOAN BAINBRIDGE SAFFORD; JOEL BERTOCCHI; FRED FOREMAN; SCOTT R. LASSAR; JAMES B. BURNS; KENNETH GILES; TONY S. MORTON, a/k/a TONY SMITH; RAYMOND RAVEN; and MICHAEL A. VLAMING, each in their individual capacity, Defendants.**

No. 99 C 4748

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

2000 U.S. Dist. LEXIS 6805

May 16, 2000, Decided

May 17, 2000, Docketed

**DISPOSITION:**

[\*1] Summary judgment (Doc. 8-1) in favor of Defendants granted. Judgment entered in favor of Defendants and against Plaintiff.

**COUNSEL:**

For WILLIAM J BENSON, plaintiff: Jeffrey A. Dickstein, Attorney at Law, Tulsa, OK.

**JUDGES:**

REBECCA R. PALLMEYER, United States District Judge.

**OPINIONBY:**

REBECCA R. PALLMEYER

**OPINION:****MEMORANDUM OPINION AND ORDER**

Plaintiff William J. Benson ("Benson") brings this *Bivens* action against current and former federal prosecutors Joan Bainbridge Safford ("Safford"), Joel Bertocchi ("Bertocchi"), Fred Foreman ("Foreman"), Scott R. Lassar ("Lassar"), James B. Burns ("Burns"); federal probation officers Tony S. Morton, a/k/a Tony Smith ("Smith"), Raymond Raven ("Raven"), Michael A. Vlaming ("Vlaming"); and Financial Litigation Agent Kenneth Giles ("Giles") (collectively "Defendants"). Plaintiff was convicted on two misdemeanor counts of willful failure to file a tax return and one felony count of willful tax evasion. Defendants were involved in enforcing the terms of his probation when the district court judge vacated his conviction and ordered him

released. Now before the court, in his two-count complaint, Benson alleges that Defendants (1) violated his Fifth Amendment [\*2] right against double jeopardy and (2) conspired to deprive him of his First Amendment rights of speech, travel, and association. Defendants move for summary judgment on three grounds: (1) absolute and qualified immunity, (2) *res judicata*, and (3) waiver for failure to raise the double jeopardy issue trial. For the reasons discussed below, the court grants the Defendants' motion for summary judgment.

**FACTUAL BACKGROUND**

In December 1989, a jury convicted Benson of two misdemeanor counts of willful failure to file a federal tax return, 26 U.S.C. § 7203, and one felony count of willful tax evasion, 26 U.S.C. § 7206. (Plaintiff's Local Rule 56.1(b) Response to Defendants' Local Rule 56.1 Statement of Material Facts In Support of Summary Judgment ("56.1(b) Resp.") P 1.) Judge Paul E. Plunkett of this court sentenced Benson to one-year terms on counts I and II (misdemeanors), and a four-year term on count III (felony). (Defendants' Local Rule 56.1 Statement of Material Facts in Support of Summary Judgment ("56.1 Statement") P 2.) All three jail sentences were to run concurrently. (*Id.* P 3.)

Benson began serving his sentence [\*3] on May 29, 1990. *Benson v. United States*, 969 F. Supp. 1129, 1130 (N.D. Ill. 1997). He was scheduled to be paroled on September 27, 1991. n1 (*Id.*) Benson appealed and on September 3, 1991, the Seventh Circuit reversed Benson's convictions and remanded for a new trial on all charges. *United States v. Benson*, 941 F.2d 598 (7th Cir. 1991), as amended, 957 F.2d 301 (7th Cir. 1992). n2 On September 4, 1991, the day after the opinion was issued,