

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

August 19, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

JOSHUA L. LYONS,

Plaintiff - Appellant,

v.

KEVIN KIMMEY; IRENNAH TYLER;
CREIGHTON BATES,

Defendants - Appellees.

No. 21-1219
(D.C. No. 1:21-CV-01027-LTB-GPG)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MATHESON**, **BRISCOE**, and **PHILLIPS**, Circuit Judges.

Plaintiff Joshua Lyons, appearing pro se, appeals from the district court's decision dismissing Lyons' amended civil rights complaint without prejudice pursuant to the *Younger* doctrine.¹ Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we affirm.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

¹ See *Younger v. Harris*, 401 U.S. 37 (1971).

I

Lyons is a resident of Riverside, California, but the events giving rise to this case occurred while Lyons was in Lakewood, Colorado. On the afternoon of July 16, 2020, Lyons was walking his dogs in Belmar Park in Lakewood, when he noticed Irennah Tyler, an officer with the Lakewood Police Department (LPD), parked in the middle of Belmar Park. After concluding his dog walk, Lyons noticed that Tyler was still parked in the same location and had been joined by two other LPD officers. Lyons allegedly loaded his dogs into his vehicle, waited ten minutes, and then videotaped himself walking up to and confronting the three LPD officers. According to Lyons, the three officers dispersed upon his arrival and two of the officers rolled up the windows of their patrol vehicles and ignored him. Lyons asked Tyler why she had been in the park for ninety minutes. According to Lyons, Tyler indicated that she was investigating a report of someone in the park on a motor bike or scooter who was flipping people off and trying to run people off of a walking path. Lyons informed Tyler that he would be raising a complaint about her use of time in the park, and explained that he had just walked his dogs in the park and had not seen or heard a motorcycle.

Approximately three hours after this incident, Lyons was sitting in his vehicle in a parking lot at Belmar Park. Kevin Kimmey, an LPD officer, allegedly approached Lyons' vehicle and informed Lyons that the music Lyons was playing inside his car was too loud. Kimmey apparently asked Lyons to identify himself, and Lyons refused to do so. Kimmey called Tyler, his partner, to assist him. Kimmey

and Tyler allegedly attempted to take a photograph of the VIN number on Lyons' vehicle. Kimmey then allegedly opened one of the doors of Lyons' vehicle in an attempt to identify Lyons. The encounter allegedly concluded with Kimmey and Tyler telling Lyons to keep his music down and then leaving the scene.

Lyons returned to Belmar Park the next morning. After walking his dogs around the perimeter of the park, Lyons sat in his vehicle, which was again parked in a lot at the park. While he was sitting in his car, Lyons observed Officer Kimmey drive into the parking lot in his patrol vehicle and "ma[k]e a long slow menacing turn around" Lyons' car. ROA at 9. Lyons drove out of the parking lot and Kimmey followed in his patrol vehicle. Kimmey attempted to perform a traffic stop on Lyons and his vehicle, which lacked license plates. Lyons, believing the attempted stop was "unlawful," did not immediately stop his vehicle. *Id.* Instead, Lyons "slowed down to 15 mph, stopped at all stop[s] and used a turn signal to show" Kimmey he "saw him and was yielding." *Id.* According to Lyons, he "was trying to make it to the library which was only a block away from initial contact" because "the library had external video cameras" that could capture the traffic stop. *Id.* Before Lyons reached the library parking lot, however, another LPD officer, Creighton Bates, "pulled his SUV in front of [Lyons'] automobile in [a] roundabout." *Id.* Bates then allegedly "drew his service pistol and aimed it at [Lyons]." *Id.* Kimmey approached Lyons' vehicle from the rear "and also briefly drew his weapon." *Id.* Lyons alleges that he was "forcefully removed from his automobile" by Kimmey and Bates, and that Bates "then slammed [him] against" Kimmey's "patrol car . . . and proceeded to thrust[] his

penis into [Lyons'] buttocks area with clothes on.” *Id.* Kimmey and Bates then searched Lyons’ vehicle, and Lyons’ dogs were removed by animal control. Lyons was taken to jail and charged with seven traffic violations and one violation of a city noise ordinance. While in jail, Kimmey and Tyler allegedly “implied that if [Lyons] did not sign the bill (tickets) they would hold [him] in jail, until [his] dogs would be euthanized.” *Id.* Lyons was nevertheless released from jail later that morning and his dogs were returned to him shortly thereafter.

Lyons initiated these federal proceedings on April 13, 2021, by filing a pro se complaint for violation of civil rights against Kimmey, Tyler, and Bates. Lyons alleged in his complaint that the three officers violated his rights under the Fourth, Fifth, and Sixth Amendments to the United States Constitution, and also violated 18 U.S.C. §§ 241 and 242 by conspiring to deprive him of his civil rights. In addition, Lyons alleged that the officers applied excessive force during their encounters with him. In terms of relief, Lyons requested “injunctive relief of dismissal of all charges as well as a protection order from the Federal court against the [LPD]” and the state district court presiding over his charges. *Id.* at 10.

On April 14, 2021, the magistrate judge issued an order directing Lyons to cure certain deficiencies in his complaint. Lyons responded by filing an amended complaint on April 27, 2021. The allegations and claims in the amended complaint were similar in many respects to those in the original complaint. In “CLAIM ONE” of the amended complaint, Lyons alleged that “[t]he Defendants did use excessive deadly force upon [him] while he was exercising his 5th amendment right to travel.”

Id. at 22. Lyons also alleged, as part of CLAIM ONE, that the traffic stop performed by Kimmey was illegal because, at the time of the stop, Lyons was not “employed in conducting a coach, carriage, wagon, or other vehicle,” but was instead “traveling as a matter of right in his own private automobile as a human operator,” and thus “was not driving or operating a motor vehicle.” *Id.* at 26. In “CLAIM TWO” of the amended complaint, Lyons alleged that “[t]he defendants did conspire to deprive [him] of his constitutional right while acting under the color of law.” *Id.* at 82. More specifically, Lyons alleged that Kimmey, “acting in concert with” Tyler and Bates, “planned and executed a retaliatory arrest on [Lyons] for either being made to do their job or of music they did not like.” *Id.* In “CLAIM THREE” of the amended complaint, Lyons alleged that “[t]he defendants prevented/delayed the lawsuit that was being prepared for South Dakota.” *Id.* In support of this claim, Lyons alleged “that he was looking up to bring a federal lawsuit against The State of South Dakota,” and that defendants’ actions somehow interfered or delayed him from doing so. *Id.* The amended complaint sought “compensatory and punitive relief . . . in the form of” (1) “\$6,000,000 US dollars” that Lyons “fe[lt]” was “fair as the life of George Floyd was just valued at \$27,000,000 and though” Lyons “was not actually injured his life was put into jeopardy by the actions of the defendants,” (2) “[p]unitive damages to be decided by the courts,” and (3) “[a]ll Legal fees available.” *Id.* at 83.

The district court referred the matter to the magistrate judge for recommendation. On May 17, 2021, the magistrate judge recommended that the

amended complaint be dismissed without prejudice based on the *Younger* abstention doctrine. The magistrate judge noted that “[t]his [wa]s not the first action [Lyons] ha[d] filed with the Court regarding his encounters with Lakewood Police on July 16 and 17, 2020.” *Id.* at 90. The magistrate judge explained that “[t]he July 17, 2020 traffic stop culminated with [Lyons] being arrested and charged with violating Colorado law in at least two separate cases filed in Jefferson County District Court.” *Id.* at 91. In one of those cases, the magistrate judge noted, Lyons was charged with “failure to display proof of insurance, refusing to display a driver’s license, and not having a driver’s license on his person.” *Id.* In the other case, the magistrate judge noted, Lyons was charged with “resisting arrest and obstructing a peace officer.” *Id.* The magistrate judge noted that “[o]n September 15, 2020, [Lyons] attempted to remove the [two] state cases to” federal court. *Id.* The magistrate judge noted that the federal district court “remanded these actions to the Jefferson County District Court on September 21, 2020,” and that both cases remained pending in state court. *Id.* The magistrate judge concluded that *Younger* abstention was required because (1) the state court criminal proceedings against Lyons were ongoing, (2) the state court criminal proceedings implicated important state interests, and (3) the state court criminal proceedings afforded Lyons an opportunity to raise the constitutional challenges outlined in his amended complaint. The magistrate judge in turn concluded that Lyons had failed to establish that the ongoing state court criminal proceedings were commenced in bad faith or for purposes of harassment. Lastly, the magistrate judge concluded that Lyons “ha[d] not shown an irreparable injury

stemming from the pending state cases.” *Id.* at 95. Consequently, the magistrate judge concluded that “*Younger* prevented [Lyons] from bringing his federal claims in [federal district court] while the state proceedings remain[ed] pending.” *Id.*

Lyons filed written objections to the magistrate judge’s recommendation. Lyons argued, for example, that license plates are unconstitutional, that traffic violations are not crimes, and that the State of Colorado was interfering with his ability to make a living. He also argued that “[t]he crux of this matter is” whether he has “the RIGHT TO TRAVEL without impediment or taxation in the conveyance of his choosing and are traffic infractions really crime[s].” *Id.* at 102.

On June 4, 2021, the district court issued an order overruling Lyons’ written objections, accepting and adopting the magistrate judge’s recommendation, and dismissing the amended complaint without prejudice. The district court also denied Lyons leave to proceed on appeal in forma pauperis. Final judgment was entered that same day.

Lyons filed a timely notice of appeal.

II

Lyons appeals from the district court’s decision to abstain from hearing, and thus to dismiss without prejudice, his amended complaint. We review the district court’s decision de novo. *Weitzel v. Div. of Occupational & Prof’l Licensing of Dep’t of Commerce*, 240 F.3d 871, 875 (10th Cir. 2001).

Absent extraordinary or special circumstances, federal courts are prohibited from interfering with ongoing state criminal proceedings under the Supreme Court’s

decision in *Younger*. More specifically, federal courts are required to abstain under *Younger* when “(1) there is an ongoing criminal . . . proceeding, (2) the state court provides an adequate forum to hear the claims raised in the federal complaint, and (3) the state proceedings involve important state interests.” *Weitzel*, 240 F.3d at 875 (quotation marks omitted). If these three requirements are met and no exceptions apply, abstention is mandatory. *Id.*

The district court in this case carefully considered each of these three requirements and concluded that all three were met. In his appeal, Lyons does not challenge the district court’s analysis on any of the three requirements. Instead, Lyons argues that *Younger* abstention does not apply in this case because he “filed the petition for federal removal in time, retain[ed] personal jurisdiction and challeng[ed]” the state court’s “subject matter jurisdiction at the same time.” Aplt. Br. at 5. He also argues that “the supremacy clause of the United States of America constitution voids the *Younger* abstention” doctrine because “[i]t is the duty of the [district] court to decide if there is a constitutional violation first because it is the supreme law.” *Id.* at 6. In addition, he argues in summary fashion that “[t]he State courts have been bias[ed] towards the police and combative toward[s]” him. *Id.* at 8.

We reject Lyons’ arguments. The exceptions to the *Younger* doctrine that have been identified by the Supreme Court are quite narrow. “Only in cases of proven harassment or prosecutions undertaken by state officials in bad faith without hope of obtaining a valid conviction and perhaps in other extraordinary circumstances where irreparable injury can be shown” will *Younger* abstention not apply. *Perez v.*

Ledesma, 401 U.S. 82, 85 (1971). Based upon the record before us, we are unable to conclude that any of those circumstances apply in Lyons' case. See *Weitzel*, 240 F.3d at 877 (noting that it is the plaintiff's burden, in seeking to overcome the bar of *Younger* abstention, to do more than merely allege bad faith or harassment by state officials) To be sure, Lyons questions the propriety of his arrest and his ensuing prosecutions in the Colorado state courts. But those issues can and should be resolved in the first instance by the Colorado state courts. Consequently, we agree with the district court that *Younger* required its abstention in this case.

III

We AFFIRM the judgment of the district court and DENY Lyons' motion to proceed in forma pauperis on appeal.

Entered for the Court

Mary Beck Briscoe
Circuit Judge