

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

KENNETH CHERCH,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 1:13-CV-586-WHA
)	
OFFICER JIM MOCK, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Plaintiff filed this *pro se* 42 U.S.C. § 1983 complaint against law enforcement officials employed by the Geneva Police Department. Plaintiff alleged the police officers conducted an unlawful search and seizure of his hotel room which resulted in the filing of drug charges against him. This case is now before the court on the Recommendation of the Magistrate Judge (*Doc. No. 23*), in which the Magistrate Judge recommends that Defendants' motion to dismiss based on the *Younger* abstention doctrine¹ be granted regarding Plaintiff's claims for equitable relief against them and such claims be dismissed without prejudice, that Defendants' motion to dismiss be denied regarding Plaintiff's § 1983 claim for damages and the damages claim be stayed pending resolution of the related state criminal case proceedings against Plaintiff, and that the case be administratively closed. Defendants filed a timely objection to the Recommendation. *Doc. No. 24*. They object to the recommendation for a stay and request leave to file a motion for summary judgment. *Id.*

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

In their objection, Defendants inform the court that Plaintiff's state court criminal proceedings were resolved by entry of his guilty plea to unlawful possession with intent to distribute on July 10, 2014. *Doc. No. 24, Exh. A*. As a result, Defendants maintain a stay of this matter is unnecessary and request leave to file a dispositive motion regarding the issues in the complaint which they maintain have been resolved against Plaintiff. *Id.* Based on the information in the objection regarding the status of Plaintiff's state court criminal proceedings of which the court has just been made aware, the undersigned concludes the Recommendation of the Magistrate Judge which recommends a stay and administrative closure of this matter should be rejected as moot.²

Accordingly, after an independent evaluation and *de novo* review of the record, it is ORDERED that:

1. Defendants' objection to the Recommendation of the Magistrate Judge that this matter be stayed (*Doc. No. 24*) is SUSTAINED;

2. The Recommendation of the Magistrate Judge (*Doc No. 23*) is ADOPTED in part and is REJECTED as moot in part:

a. It is ADOPTED regarding granting the motion to dismiss with respect to any claims by Plaintiff for equitable relief and such claims are dismissed without prejudice;

b. It is ADOPTED regarding denial of the motion to dismiss with respect to Plaintiff's § 1983 claim for damages;

c. It is REJECTED as moot regarding a stay of Plaintiff's damages claim

²Defendants' request for leave to file a dispositive motion shall be addressed by separate order.

against Defendants pending resolution of the related state criminal case proceedings as those proceedings are now resolved; and

d. It is REJECTED as moot regarding the directive for administrative closure.

3. This case is REFERRED back to the Magistrate Judge for further proceedings.

Done, this 8th day of September 2014.

/s/ W. Harold Albritton
SENIOR UNITED STATES DISTRICT JUDGE