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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DEANDRE L. DERRITT,

Plaintiff,

v.

SAN BERNARDINO SHERIFF'S
DEPARTMENT, et al.,

Defendants.

) CASE NO. ED CV 11-1092-SVW(PJW)
)
)
) ~~PROPOSED~~ ORDER DISMISSING CASE
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Plaintiff is a pretrial detainee being held at the West Valley Detention Center ("West Valley") in Rancho Cucamonga, California, awaiting trial on criminal charges. He has filed this civil rights suit against the San Bernardino County Sheriff's Department, San Bernardino County, and two deputies who work at West Valley, alleging that they violated his Sixth Amendment right to counsel. For this alleged violation, he seeks monetary damages.

Plaintiff cannot bring a civil rights action that has the potential to undermine the validity of his ongoing state criminal proceedings. See *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994) (holding convicted prisoner cannot collaterally challenge an allegedly unconstitutional criminal conviction in a civil rights action unless the underlying conviction was reversed on direct appeal; expunged by

1 executive order; declared invalid by a state tribunal; or questioned
2 by the grant of a federal writ of habeas corpus); *Harvey v. Waldron*,
3 210 F.3d 1008, 1014 (9th Cir. 2000) (concluding that *Heck* applies to
4 pending criminal proceedings), *overruled on other grounds by Wallace*
5 *v. Kato*, 549 U.S. 384 (2007). That is exactly what would happen if
6 this Court were to conclude that Plaintiff's Sixth Amendment right was
7 being violated while his criminal case was ongoing. For this reason,
8 Plaintiff's suit is dismissed without prejudice to re-file when his
9 state case becomes final.¹

10 IT IS SO ORDERED.

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12 DATED: 5/25/12

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15 STEPHEN V. WILSON
16 UNITED STATES DISTRICT JUDGE

17 Presented by:

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20 PATRICK J. WALSH
21 UNITED STATES MAGISTRATE JUDGE

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23
24 ¹ To the extent that Plaintiff is asking this court to enjoin
25 the state criminal proceedings, that request is barred under *Younger*
26 *v. Harris*, 401 U.S. 37, 53-54 (1971). Federal courts generally
27 abstain from enjoining state courts from proceeding in ongoing
28 criminal prosecutions. *Id.*; see also *Drury v. Cox*, 457 F.2d 764, 764-
65 (9th Cir. 1972) (holding, except in the "most unusual
circumstances," a defendant is not entitled to challenge his state
prosecution in federal court "until after the jury comes in, judgment
has been appealed from and the case concluded in the state courts").