

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RASHID DEARY-SMITH,
Plaintiff,
v.
CLARK JAMES HEAD,
Defendant

No. 2:14-cv-2783 TLN CKD P

ORDER AND FINDINGS AND RECOMMENDATIONS

Plaintiff is a pre-trial detainee proceeding pro se with this action pursuant to 28 U.S.C. §1983. Plaintiff has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. §636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. §1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's jail trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 II. Screening

2 The court is required to screen complaints brought by prisoners seeking relief against a
3 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).

4 Plaintiff has a criminal case pending in the Sacramento County Superior Court. He has
5 filed a motion in superior court to dismiss the case for lack of a speedy trial. In the instant
6 petition, he asserts that he has been denied a preliminary hearing and a speedy trial for 22 months,
7 and that his attorney has not filed any motions on his behalf for the past 13 months. Plaintiff
8 asserts that these circumstances violate his federal constitutional rights to due process and a
9 speedy trial. (ECF No. 1.)

10 Under the Younger abstention doctrine, federal courts are barred from hearing a civil
11 rights claim arising from an ongoing criminal prosecution. See Younger v. Harris, 401 U.S. 37
12 (1971). To the extent the state court has not had a chance to consider plaintiff's constitutional
13 arguments, it should have the first chance to do so and, if appropriate, correct any violation.
14 Given these circumstances, the court will recommend that the complaint be dismissed without
15 further leave to amend. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en
16 banc).

17 In accordance with the above, IT IS HEREBY ORDERED that:

- 18 1. Plaintiff's request for leave to proceed in forma pauperis is granted; and
- 19 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
20 shall be collected and paid in accordance with this court's order to the Sheriff of Sacramento
21 County, filed concurrently herewith.

22 IT IS HEREBY RECOMMENDED that the complaint be dismissed and this case closed.

23 These findings and recommendations are submitted to the United States District Judge
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
25 after being served with these findings and recommendations, plaintiff may file written objections
26 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings
27 and Recommendations." Plaintiff is advised that failure to file objections within the specified
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1 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
2 (9th Cir. 1991).

3 Dated: February 19, 2015

Carolyn K. Delaney

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5 CAROLYN K. DELANEY
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10 UNITED STATES MAGISTRATE JUDGE

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