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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GLENN DANIEL GALLOT,
Plaintiff,

v.

CHRISTOPHER DOVE,
Defendant.

Case No. 17-00966 BLF (PR)
ORDER OF DISMISSAL

Plaintiff, a pre-trial detainee at the San Francisco County Jail, filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff's motion for leave to proceed *in forma pauperis* will be granted in a separate order.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune

1 from such relief. *See id.* § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally
2 construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

3 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
4 elements: (1) that a right secured by the Constitution or laws of the United States was
5 violated, and (2) that the alleged violation was committed by a person acting under the
6 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

7 **B. Plaintiff's Claims**

8 In the complaint's "statement of claim," Plaintiff states that he has "been jailed for
9 2 yrs 11 months for false charges by a San Francisco Public Utilities Commission Water
10 Dept. Employee." (Compl. at 3.) He claims that this employee filed "false battery
11 charges" against him. (*Id.*) As defendant he has named an attorney, Christopher Dove.
12 (*Id.* at 2.) Under the "relief" section, Plaintiff states that he desires Defendant Dove
13 "restrained from my case, for allowing violation of my constitutional rights, and tried for
14 contributing to cruel and unusual punishment to [Petitioner], and putting [Petitioner's]
15 safety & health in jeopardy, violation of my due process, and much more." (*Id.*)

16 Attached to another document filed by Plaintiff is a "confidential attorney-client
17 communication" written by Defendant Dove to Plaintiff. (Docket No. 4, Attach.) The
18 letter is dated February 10, 2017, and states that Defendant Dove appeared on Plaintiff's
19 behalf in a pending criminal action against Plaintiff. (*Id.*) Defendant Dove also stated that
20 he notified the trial court of Plaintiff's unwillingness to work with him, and that he made a
21 request to be relieved as Plaintiff's attorney, but that the court denied the request without
22 explanation. (*Id.*) Accordingly, it appears that Defendant Dove continues to represent
23 Plaintiff in his state criminal prosecution.

24 Under principles of comity and federalism, a federal court should not interfere with
25 ongoing state criminal proceedings by granting injunctive or declaratory relief absent
26 extraordinary circumstances. *See Younger v. Harris*, 401 U.S. 37, 43-46 (1971); *Samuels*
27 *v. Mackell*, 401 U.S. 66, 68-74 (1971). *Younger* abstention is required when: (1) state
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1 proceedings, judicial in nature, are pending; (2) the state proceedings involve important
2 state interests; and (3) the state proceedings afford adequate opportunity to raise the
3 constitutional issue. *See Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457
4 U.S. 423, 432 (1982). All three elements must be present *Agriesti v. MGM Grand Hotels,*
5 *Inc.*, 53 F.3d 1000, 1001 (9th Cir. 1995) (abstention improper where arrest and issuance of
6 citation were executive acts not judicial in nature, and only potential for future state
7 judicial proceedings existed). A fourth requirement has also been articulated by the Ninth
8 Circuit: that “the federal court action would enjoin the state proceeding or have the
9 practical effect of doing so, i.e., would interfere with the state proceeding in a way that
10 *Younger* disapproves.” *SJSVCCPAC v. City of San Jose*, 546 F.3d 1087, 1092 (9th Cir.
11 2008) (citing cases). Here, it is clear from the complaint and the papers filed thereafter by
12 Plaintiff that there is an ongoing state criminal action against him.

13 Applying the principles discussed in *Middlesex*, the Court finds *Younger* abstention
14 is applicable to the proceedings pending against Plaintiff. In particular, the proceedings
15 are judicial in nature, they involve important state interests in the prosecution of crimes,
16 and they afford Plaintiff an opportunity to raise his constitutional claims, including
17 removal of his attorney. With respect to the Ninth Circuit’s fourth requirement, *see*
18 *SJSVCCPAC*, 546 F.3d at 1092, “restraining” Plaintiff’s defense counsel from representing
19 him would necessarily involve enjoining the state proceedings because counsel’s request to
20 withdraw has already been denied. Although the letter from Defendant Dove indicates that
21 his recent request to withdraw as attorney was denied by the trial court, it appears this
22 request was made while Plaintiff was not present; accordingly, there is nothing prohibiting
23 Plaintiff from renewing the request himself at his next court appearance. Lastly, Plaintiff
24 has made no showing that extraordinary circumstances exist that would require federal
25 intervention. *See Younger*, 401 U.S. at 46 (holding extraordinary circumstances exist
26 when there is danger of great and immediate irreparable loss; holding cost, anxiety and
27 inconvenience of defending against good-faith criminal prosecution not extraordinary
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circumstance requiring federal intervention); *see also Carden*, 626 F.2d at 84 (holding federal intervention appropriate only under “special circumstances,” such as proven harassment, bad faith prosecution, or other extraordinary circumstances resulting in irreparable injury).

CONCLUSION

For the foregoing reasons, this action is hereby DISMISSED without prejudice under *Younger*, 401 U.S. at 43-46, to returning to federal court once Plaintiff’s state court proceedings have concluded and he has exhausted all necessary remedies.

IT IS SO ORDERED.

Dated: April 18, 2017


BETH LABSON FREEMAN
United States District Judge