

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

ANTHONY L. EVANS,

Plaintiff,

vs.

SEAN DALY and ERIN DIEHL,

Defendants.

CV 18-26-BU-BMM-JCL

**ORDER ADOPTING MAGISTRATE
JUDGE'S FINDINGS AND
RECOMMENDATIONS**

United States Magistrate Judge Jeremiah Lynch entered Findings and Recommendations in this matter on October 16, 2018. (Doc. 20.) Neither party filed objections.

Given that no objections were filed, the Court has reviewed Judge Lynch's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Lynch's Findings and Recommendations, and adopts them in full.

I. BACKGROUND

Evans was sentenced to 40 years with 24 years suspended on July 26, 2001. (Doc. 20 at 1-2.) Evans was discharged from prison on July 10, 2015. *Id.* at 2. Evan's supervising probation officer, Sean Daly, along with Erin Diehl

(collectively “Defendants”), conducted a home visit at Evans’s residence on July 26, 2016. *Id.* During the encounter, Daly located pornography search terms during a review of contents of Evans’s cell phone. *Id.* Evans thereafter made additional admissions. *Id.* Daly filed a report of violation with the state district court alleging possession of pornography, as well as possession of weapons, alcohol, lying to his probation officer, and having a smartphone without permission. *Id.* Evans appeared in the Eleventh Judicial District Court on December 7, 2017. *Id.* at 3. Evans’s 24 year suspended sentence was revoked.

Evans filed a notice of appeal with the Montana Supreme Court appealing the revocation order. *Id.* at 3-4. Evans also filed a Complaint in the immediate matter with the following allegations: (1) that Daly’s search of his cell phone was a violation of his Fourth Amendment rights and his privacy under the United States Constitution (Doc. 2 at 3); and (2) that Defendants failed to advise Evans of his Miranda rights before conducting an in-custody interview. *Id.* at 13.

Defendants filed a Motion to Dismiss Request for Declaratory Relief and to Stay Proceedings (Doc. 16.) Defendants argue Evans’s request for declaratory relief and a stay of his action while parallel state court proceedings are pending requires dismissal. *Id.* Evans did not respond to the motion.

II. DISCUSSION

Judge Lynch recommends Defendants' motion should be granted. (Doc. 20 at 1.) *Younger v. Harris*, 401 U.S. 37 (1971), bars federal challenges to ongoing state judicial proceedings in the absence of immediate irreparable injury to the plaintiff. *Id.* at 45. A four part test applies to abstention in civil cases: (1) the state proceeding is ongoing; (2) the state proceeding is a quasi-criminal enforcement action or involves a state's interest in enforcing the orders and judgments of its courts; (3) the proceeding implicates and important state interest; and (4) the proceeding allows litigations to raise federal challenges. *Cooke v. Harding*, 879 F.3d 1035, 1039 (9th Cir. 2018).

Judge Lynch determined that the ongoing state criminal proceedings require dismissal. Judge Lynch determined that the proceedings involve important state interest with which the Court may not interfere while it is ongoing. Further, Judge Lynch reasoned that Evans had opportunities under Montana law to raise federal questions and concerns. Finally, Judge Lynch determined that an action in this Court would interfere with the state criminal proceedings. (Doc. 20 at 5-7.) Accordingly, Judge Lynch recommended the Court abstain from adjudicating Evans's claims.

IT IS ORDERED that Judge Lynch's Findings and Recommendations (Doc. 20), are **ADOPTED IN FULL**. Defendants' Motion to Dismiss Request for Relief and to Stay Proceedings (Doc. 16) is **GRANTED**. Evans's claims for declaratory relief are **DISMISSED WITHOUT PREJUDICE** and the remained of the action seeking monetary damages is **STAYED** pending resolution of the state court proceedings.

Evans is directed to file a report on the status of his criminal charges every six months until such time as his criminal charges have been resolved. If Evans desires to continue with this case after disposition of the criminal charges against him, he must request the stay be lifted within thirty days of completion of the appellate process.

DATED this 13th day of November, 2018.



Brian Morris
United States District Court Judge