

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

TERRY-LEE,

Plaintiff,

vs.

NORTH VALLEY COUNTY WATER
AND SEWER DISTRICT, et al.,

Defendants.

CV-15-43-GF-BMM

ORDER

Plaintiff Terry-Lee filed an Amended Complaint *pro se* on September 23, 2015. (Doc. 40). The Amended Complaint, construed liberally, asserts claims under 42 U.S.C. § 1983. Mr. Terry-Lee's claims are premised upon his conviction for misdemeanor theft in Valley County Justice Court on June 5, 2015. Mr. Terry-Lee alleges that the Defendants violated his rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. (Doc. 40 at 4-9). Mr. Terry-Lee seeks injunctive and declaratory relief. Mr. Terry-Lee requests that the Court put "a halt to everything that is happening in state court in this matter," and declare that the Defendants have violated his constitutional rights. (Doc. 40 at 12).

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on February 14, 2018. (Doc. 98). Judge Johnston

determined that Mr. Terry-Lee's claims were barred by the *Younger* abstention doctrine. (Doc. 98 at 4-6). Judge Johnston recommended that the Defendants' Motion for Summary Judgment be granted, and that this action be dismissed. (Doc. 98 at 7). Mr. Terry-Lee filed objections to Judge Johnston's Findings and Recommendations on February 28, 2018. (Doc. 103).

The Court reviews *de novo* findings and recommendations to which objections are made. 28 U.S.C. § 636(b)(1). The Court has reviewed Judge Johnston's Findings and Recommendations *de novo*. The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full.

Mr. Terry-Lee's claims for injunctive and declaratory relief challenge pending state court criminal proceedings. The Supreme Court's decision in *Younger v. Harris*, 401 U.S. 37 (1971), directs federal courts to abstain from granting injunctive or declaratory relief that would interfere with pending state judicial proceedings. *Id.* at 40-41. A federal court must abstain under *Younger* if the following four requirements are met: (1) a state initiated proceeding is ongoing; (2) the state judicial proceeding implicates important state interests; (3) the federal plaintiff is not barred from litigating federal constitutional issues in the state proceeding; and (4) the federal court action would enjoin the state proceeding or

have the practical effect of doing so. *Gilbertson v. Albright*, 381 F.3d 965, 978 (9th Cir. 2004).

All elements of *Younger* abstention are established in this case. First there exists an ongoing criminal action against Mr. Terry-Lee in the Montana Supreme Court. The Montana Supreme Court upheld Mr. Terry-Lee's conviction on January 16, 2018. *See State v. Terrance Lee Brauner, a/k/a Terry-Lee*, 2018 WL 417289 (Mont. Jan. 16, 2018). Mr. Terry-Lee filed an objection and a petition for rehearing on January 29, 2018. The petition is pending before the Montana Supreme Court. The criminal proceeding implicates important state interests. The State of Montana has a significant state interest in prosecuting conduct that constitutes a criminal offense under Montana law. Mr. Terry-Lee will have an adequate opportunity to litigate federal constitutional issues in the state court proceeding. And finally, any decision by this Court as to whether Mr. Terry-Lee's conviction violated his constitutional rights would interfere unduly with the state criminal proceeding. This Court must abstain therefore from adjudicating Mr. Terry-Lee's claims for injunctive and declaratory relief.

Accordingly, IT IS ORDERED:

1. Defendants' Motion for Summary Judgment (Doc. 85) is GRANTED.
2. Plaintiff's Amended Complaint (Doc. 40) is DISMISSED without

prejudice.

2. Any appeal of this decision would not be taken in good faith as the Amended Complaint lacks arguable substance in law or fact.

3. The Clerk is directed to enter judgment accordingly.

DATED this 13th day of March, 2018.

A handwritten signature in blue ink that reads "Brian Morris". The signature is written in a cursive style with a horizontal line underneath it.

Brian Morris
United States District Court Judge