

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

KORY DWAYNE MCCORMICK,	)	
	)	
Plaintiff,	)	
vs.	)	NO. CIV-17-0753-HE
	)	
STATE OF OKLAHOMA, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER**

Plaintiff Kory Dwayne McCormick, appearing *pro se* and *in forma pauperis*, filed this § 1983 action alleging violations of his constitutional rights. Although plaintiff's complaint is unclear, he apparently seeks to have criminal charges currently pending in Oklahoma state court dismissed with prejudice on the ground they are based on an unconstitutional search and seizure.<sup>1</sup> Pursuant to 28 U.S.C. §636(b)(1)(B) - (C), the matter was referred to Magistrate Judge Shon T. Erwin for initial proceedings.

On initial screening pursuant to 28 U.S.C. §§ 1915(e) & 1915A(a) & (b), the magistrate judge has recommended that the court abstain under Younger v. Harris, 401 U.S. 37 (1971) and dismiss the case without prejudice. He concluded that Younger abstention is required because there is an ongoing state criminal proceeding,<sup>2</sup> which

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<sup>1</sup> The docket sheet for plaintiff's criminal case in the Payne County District Court, CF-2017-283, may be viewed at [www.oscn.net](http://www.oscn.net) (last accessed Sept. 15, 2017).

<sup>2</sup>A preliminary hearing was held on June 19, 2017, and the matter is set for further proceedings on September 20, 2017.

provides an adequate forum to redress plaintiff's claims.<sup>3</sup> The court agrees with the magistrate judge's analysis and conclusion.

Plaintiff failed to object to the Report and Recommendation and thereby waived his right to appellate review of the factual and legal issues it addressed. Casanova v. Ulibarri, 595 F.3d 1120, 1123 (10th Cir. 2010); *see* 28 U.S.C. §636(b)(1)(C).

Accordingly, the court adopts Magistrate Judge Erwin's Report and Recommendation and dismisses this action without prejudice.

**IT IS SO ORDERED.**

Dated this 26<sup>th</sup> day of September, 2017.

  
\_\_\_\_\_  
JOE HEATON  
CHIEF U.S. DISTRICT JUDGE

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<sup>3</sup> *The magistrate judge noted that plaintiff challenges the constitutionality of a search and seizure, that the criminal charges pending against him apparently are based on items found during the search and that the docket sheet for his criminal case reflects that a motion to suppress the evidence seized during the search is pending.*