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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 TED L. CRESS,

9 Plaintiff,

Case No. C17-420 RSL-BAT

10 v.

**ORDER DECLINING SERVICE
AND GRANTING LEAVE TO
AMEND**

11 SNOHOMISH COUNTY SUPERIOR COURT,
et al.,

12 Defendants.

13 Ted L. Cress, who is presently confined at the Snohomish County Corrections (“SCC”),
14 filed a civil rights complaint against the Snohomish County Superior Court, Snohomish County
15 Public Defender Association, Snohomish County Corrections, and Niel Freedman of the Public
16 Defender Association. Dkt. 4-1. Mr. Cress alleges that the court and public defenders are failing
17 to respond to his motion for new counsel and provide him with discovery. Mr. Cress also alleges
18 that unidentified people at SCC took away his reading magnifier (he claims to be blind), will not
19 allow him to have a job at the jail, refuse his request to move to a lower bunk on the upper tier,
20 and stealing his medication. *Id.*

21 The Court **DECLINES** to serve the complaint because, as discussed in more detail
22 below, the complaint contains numerous deficiencies. However, the Court **GRANTS** Mr. Cress
23 leave to file an amended complaint by **May 5, 2017**.

ORDER DECLINING SERVICE AND GRANTING
LEAVE TO AMEND - 1

1 **DISCUSSION**

2 The Court declines to serve the complaint because it contains fatal deficiencies that, if not
3 addressed, might lead to a recommendation of dismissal of the entire action for failure to state a
4 claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2)(b)(ii), 1915A(b)(1). In order
5 to sustain a civil rights action under § 1983, a plaintiff must show (1) that he suffered a violation
6 of rights protected by the Constitution or created by federal statute, and (2) that the violation was
7 proximately caused by a person acting under color of state or federal law. *See Crumpton v.*
8 *Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991).

9 **A. Government Entities and Public Defender as Parties**

10 Mr. Cress has failed to name a proper defendant. A state public defender performing
11 traditional lawyer functions is not a state actor. *Polk County v. Dodson*, 454 U.S. 312, 324-25,
12 102 S.Ct. 445, 70 L.Ed. 509 (1981); *Miranda v. Clark County*, 319 F.3d 465, 468 (9th Cir. 2002).
13 In addition, government entities such as the Snohomish County Superior Court, Snohomish
14 County Public Defender Association, and Snohomish County Corrections are not proper parties
15 to a § 1983 complaint. *See Howlett v. Rose*, 496 U.S. 356, 365 (1990). While Snohomish
16 County is a municipality that can be sued under § 1983, *Monell v. New York City Dept. of Social*
17 *Services*, 436 U.S. 658, 690 (1978), Mr. Cress fails to allege how the County’s employees or
18 agents acted through an official custom, pattern or policy that permits deliberate indifference to,
19 or violates, his civil rights or that the County ratified the unlawful conduct. *Monell*, 436 U.S. at
20 690–91.

21 **B. Challenge to Ongoing State Criminal Action**

22 Even if Mr. Cress were granted leave to amend his complaint to name a proper defendant
23 as to his claim that he is being denied appropriate representation in his state criminal action, he

1 may not challenge the propriety of ongoing state criminal proceedings in a 42 U.S.C. § 1983
2 lawsuit. Federal courts will not intervene in a pending criminal proceeding absent extraordinary
3 circumstances where the danger of irreparable harm is both great and immediate. See *Younger v.*
4 *Harris*, 401 U.S. 37, 45, 46 (1971). The *Younger* abstention doctrine requires that a district
5 court dismiss a federal action if state proceedings are (1) ongoing, (2) implicate important state
6 interests, and (3) afford the plaintiff an adequate opportunity to raise the federal issue. *Columbia*
7 *Basin Apartment Ass'n v. City of Pasco*, 268 F.3d 791, 799 (9th Cir. 2001) (citation omitted).
8 All of the *Younger* criteria appear to be satisfied here. The proceedings are ongoing, involve a
9 criminal prosecution that implicates important state interests, and there is nothing to indicate that
10 Mr. Cress cannot raise in his criminal case the same claims he raises here or that there is a danger
11 of great and immediate irreparable harm. Therefore, it appears that this action would unduly
12 interfere with the state criminal proceeding in a way *Younger* disapproves.

13 **C. Conditions of Confinement at SCC**

14 With regard to the remainder of Mr. Cress's claims (that he is being denied use of a
15 magnifier to read, his request for a different bunk assignment has been denied, and his
16 medication have been taken away from him), he has failed to plead sufficient facts from which
17 the Court may determine whether he has stated a viable § 1983 claim. Mr. Cress may file an
18 amended complaint to set out these allegations more fully. In the amended complaint, plaintiff
19 must write out short, plain statements telling the Court: (1) the constitutional right plaintiff
20 believes was violated; (2) the name of the person who violated the right; (3) exactly what that
21 person did or failed to do; (4) how the action or inaction of that person is connected to the
22 violation of plaintiff's constitutional rights; and (5) what specific injury plaintiff suffered
23 because of that person's conduct. See *Rizzo v. Goode*, 423 U.S. 362, 371–72 (1976).

1 If the person named as a defendant was a supervisory official, plaintiff must either state
2 that the defendant personally participated in the constitutional deprivation (and tell the Court the
3 five things listed above), or plaintiff must state, if he can do so in good faith, that the defendant
4 was aware of the similar widespread abuses, but with deliberate indifference to plaintiff's
5 constitutional rights, failed to take action to prevent further harm to plaintiff and also state facts
6 to support this claim. *See Monell*, 436 U.S. at 691.

7 Plaintiff must repeat this process for each person he names as a defendant, including any
8 "John Doe" and "Jane Doe" defendants. If plaintiff fails to affirmatively link the conduct of
9 each named defendant with the specific injury suffered by plaintiff, the claim against that
10 defendant will be dismissed for failure to state a claim. Conclusory allegations that a defendant
11 or a group of defendants have violated a constitutional right are not acceptable and will be
12 dismissed.

13 CONCLUSION

14 The Court **DECLINES** to serve the complaint which as discussed above is deficient.
15 The Court realizes Mr. Cress is proceeding pro se. Thus rather than simply dismissing the
16 action, the Court grants him permission to show cause why his complaint should not be
17 dismissed or to file an amended complaint to cure the above-mentioned deficiencies by **May 5,**
18 **2017.** The amended complaint must carry the same case number as this one. **If no amended**
19 **complaint is timely filed, the Court will recommend that this matter be dismissed under 28**
20 **U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on which relief can be granted.**

21 DATED this 6th day of April, 2017.

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BRIAN A. TSUCHIDA
United States Magistrate Judge