

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WALTER BROWN, JR.,

Plaintiff,

v.

MADISON POLICE DEPARTMENT,²

Defendants.

ORDER

10-cv-658-slc¹

In an order dated February 1, 2011, I administratively closed three proposed civil actions filed by plaintiff Walter Brown, in which he was raising several constitutional claims related to three criminal cases that were proceeding in the Circuit Court for Dane County. (The proposed civil actions are case numbers 10-cv-720-slc; 10-cv-651-slc; and 10-cv-658-slc.) I concluded that plaintiff's cases should be stayed under the abstention doctrine set forth in Younger v. Harris, 402 U.S. 37 (1971), because he was challenging issues related

¹ For the purpose of issuing this order, I am assuming jurisdiction over the case.

² In his original complaint, plaintiff named the Madison Police Department, several attorneys from the public defenders' office, judges and prosecutors as defendants. In his proposed amended complaint, he names only the Madison Police Department. I have amended the caption accordingly.

directly to ongoing state criminal proceedings. Also, I told plaintiff that he could move to reopen his cases upon completion of the underlying criminal proceedings.

Now before the court is plaintiff's motion to reopen case number 10-cv-658-slc. Along with his motion to reopen the case, plaintiff has filed an amended complaint in which he focuses on actions by the Madison Police Department. I will treat plaintiff's amended complaint as the operative pleading.

Because plaintiff is a prisoner, I am required by the 1996 Prison Litigation Reform Act to screen his complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972).

I conclude that plaintiff has stated a claim against defendant Madison Police Department for violation of his rights under the Fourth Amendment. However, before plaintiff may proceed on this claim, he must inform the court of the status of his criminal case and any post conviction relief he is pursuing.

In his amended complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

On April 15, 2010, officers from the Madison Police Department came to plaintiff's residence. They surrounded his house, weapons drawn, and asked him to come out and talk to them about a text message that the mother of his daughter had received. He refused to leave his house or speak with them. The police threw canisters of tear gas into plaintiff's house, forcing him to leave. The police arrested plaintiff and charged him with strangulation and suffocation, disorderly conduct, failure to comply with an officer and two counts of felony bail jumping. Wisconsin v. Brown, 2010CF612. The police did not have a warrant or probable cause to enter and search plaintiff's home or to arrest him.

(According to the public records available electronically through the Wisconsin Circuit Court Access System, plaintiff's case was scheduled for trial on February 14, 2011. However, it appears that the trial was canceled and plaintiff pleaded guilty to the charges, while reserving his right to seek post conviction relief. On March 7, 2011, he filed a notice of intent to pursue post conviction relief in the circuit court.)

DISCUSSION

Plaintiff's allegations raise potential violations of his Fourth Amendment right to be free from unlawful searches and seizures. Under the Fourth Amendment, police must have probable cause to believe that the individual committed a crime before the police can arrest

the individual. Ray v. City of Chicago, 629 F.3d 660, 663 (7th Cir. 2011). Also, law enforcement officials must have probable cause to believe that “contraband or evidence of a crime will be found” in a particular place before they may search the place. United States v. Aljabari, 626 F.3d 940, 944 (7th Cir. 2010).

Plaintiff alleges that officers from the Madison Police Department arrested him after forcing him to evacuate his home and then proceeded to search his home, all without probable cause or a warrant. If plaintiff’s allegations are true, they may support a claim that defendant violated his rights under the Fourth Amendment.

Plaintiffs claims are directly related to his state court criminal case because he is challenging the underlying search and arrest. In some cases, a plaintiff’s constitutional challenge to a search and arrest under 42 U.S.C. § 1983 are compatible with a conviction. Evans v. Poskin, 603 F.3d 362, 363 (7th Cir. 2010). As the court explained in Evans, “an arrest without probable cause violates the fourth amendment but does not imply the invalidity of a conviction, because courts do not ‘suppress the body’ of the accused. Similarly, a court’s decision not to suppress illegally seized evidence can lead to a conviction without blotting out a § 1983 challenge to the seizure.” Id. at 364 (citations omitted). Thus, plaintiff’s state court conviction does not necessarily present a problem for his federal case.

However, as I explained in the previous order, under Younger v. Harris, 401 U.S. 37, 45 (1971), federal courts are required to show proper respect for state judicial systems and

abstain from issuing orders that would interfere with ongoing state criminal proceedings, except in limited circumstances. Id.; see also Nelson v. Murphy, 44 F.3d 497, 501 (7th Cir. 1995); Simpson v. Rowan, 73 F.3d 134, 135 (7th Cir. 1995). In this case, although plaintiff pleaded guilty to the criminal charges against him, it appears that he may be pursuing post conviction relief in his criminal case. If so, this federal case may interfere improperly with the state appellate court's consideration of plaintiff's arguments. Thus, before I will grant plaintiff's motion to reopen the case, he needs to inform the court about the status of his state criminal case and any post conviction relief he will seek in that case.

ORDER

IT IS ORDERED that plaintiff Walter Brown may have until May 13, 2011 to inform the court regarding the status of his criminal case number 2010CF612 and whether he will pursue post conviction relief related to the search and arrest at issue in this case.

Entered this 6th day of May, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge