

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

BRIAN LOCKE,

Petitioner,

v.

ORDER
07-C-089-S

ANDREW BISSONETTE and
STEVEN BAUER,

Respondents.

Petitioner requests leave to proceed in forma pauperis.
Attached to his affidavit of indigency is a proposed complaint.

Pursuant to 28 U.S.C. § 1915(b)(1), as amended by the Prison Litigation Reform Act, effective April 26, 1996, a prisoner bringing a civil action shall be required to pay the full amount of the \$350.00. The Court shall collect an initial partial filing fee of 20% of the greater of the average monthly deposits in the prisoner's account or the average monthly balance in the prisoner's account for the six month period immediately preceding the filing of the complaint.

According to the information that petitioner submitted, he had no income in the six month time period immediately preceding the filing of the complaint. Accordingly, petitioner does not have the means to pay an initial partial filing fee.

Petitioner's request to proceed in forma pauperis will be granted and the Court addresses the merits of his complaint.

Petitioner claims that the defendants are prosecuting him in state court in bad faith on the charge of battery by a prisoner. He alleges that he pled no contest to the charge on September 28, 2005. He further alleges that on December 20, 2005 he moved to withdraw his plea and that this motion was denied by Judge Bissonette on October 4, 2006. His interlocutory appeal of the denial was denied. Petitioner alleges that he has not yet been sentenced in his state court case. Petitioner is seeking declaratory relief terminating the state court prosecution.

In Younger v. Harris, 401 U.S. 37 (1971), the Court held that federal courts should refrain from enjoining state judicial proceedings. Three conditions are necessary to trigger Younger abstention: first, there must be an ongoing state judicial proceeding; second, the proceedings must implicate important state interests and third, there must be adequate opportunity in the state proceedings to raise constitutional challenges. Middlesex County Ethics Committee v. Garden, etc., 457 U.S. 423, 432 (1982).

Enforcement of criminal law implicates an important state interest. Huffman v. Pursue, Ltd., 420 U.S. 592, 600 (1975). In addition petitioner has the opportunity to raise his constitutional challenges in the state court proceeding. The Younger abstention doctrine applies to this case.

Petitioner claims that this Court should not abstain because the state court prosecution was brought in bad faith. Petitioner

pled no contest to the charge in September 2005. Petitioner has not alleged sufficient facts to support that the state prosecution was brought in bad faith. The Court will abstain from exercising jurisdiction in this case according to Younger. Petitioner's complaint will be dismissed for lack of subject matter jurisdiction.

ORDER

IT IS ORDERED that petitioner's request to proceed in forma pauperis is GRANTED.

IT IS FURTHER ORDERED that the above entitled action is DISMISSED for lack of subject matter jurisdiction.

Entered this 20th day of February, 2007

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge