

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-7048

KEITH ANDRE ROBINSON,

Plaintiff - Appellant,

v.

H. WHITE, #28344, Officer H. White/Norfolk Police Dept.; OFFICER J. E. MYERS, Norfolk Police Dept.; M. PIERCE, Officer M. Pierce/Norfolk Police Dept.; NORFOLK POLICE DEPARTMENT,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:18-cv-00557-LMB-MSN)

Submitted: December 18, 2018

Decided: December 21, 2018

Before AGEE, THACKER, and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Keith Andre Robinson, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Keith Andre Robinson appeals the district court's order dismissing without prejudice his 42 U.S.C. § 1983 (2012) complaint based on the *Younger** abstention doctrine. We have reviewed the record and find no reversible error. Accordingly, we deny Robinson's motion to appoint counsel and affirm for the reasons stated by the district court. *Robinson v. White*, No. 1:18-cv-00557-LMB-MSN (E.D. Va. July 19, 2018). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

* *Younger v. Harris*, 401 U.S. 37, 43 (1971).

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

Keith Andre Robinson,)
Plaintiff,)
)
v.) 1:18cv557 (LMB/MSN)
)
H. White, et al.,)
Defendants.)

ORDER

Keith Andre Robinson, a Virginia pretrial detainee proceeding pro se, has filed a civil rights action, pursuant to 42 U.S.C. § 1983, alleging that his rights were violated by officers of the Norfolk Police Department. For the reasons stated below, the Court will abstain from considering plaintiff's claims and they will be dismissed without prejudice.

Plaintiff alleges that, on December 22, 2017, Officer H. White stated that plaintiff "smelled like a green leafy substance." Compl. § IV. Officer White allegedly arrested plaintiff, searched his person and found no contraband, but took plaintiff's "utility and holiday savings in the amount of [\$8,011] ... without reasonable suspicion." Id. Officer White then allegedly searched plaintiff's car, over plaintiff's objections. Id. Plaintiff asserts that Officers White, J. E. Meyers, and M. Pierce then searched plaintiff's residence "under the guise of a 'protective sweep,'" even though the front door was closed and plaintiff objected to the search. Id. Plaintiff claims that each of these actions was a violation of his Fourth Amendment right against unreasonable searches and seizures, and that as a result, he has lost his "home, fiancé, [and] child to be due to miscarriage [sic] (cause [sic] by the total stress of entire ordeal)." Id. Plaintiff also asserts that his pending graduation as a welder has been derailed and that his health and sanity have deteriorated. Id. Plaintiff names, as defendants, Officer H. White, Officer J. E. Myers,

Officer M. Pierce, and the Norfolk Police Department. Id. § I. Plaintiff seeks \$2,000,000 in damages as well as the return of the \$8,011 which was allegedly seized by Officer White. Id. § V.

A search of the Norfolk Circuit Court case information website reveals that plaintiff has been charged with possession with intent to distribute, possession of a firearm by a convicted felon, and possession of a firearm while in possession of certain substances, all with an offense date of December 22, 2017, and an arrest date of December 23, 2017. These criminal cases appear to be set for a jury trial scheduled to start September 24, 2018. Therefore, plaintiff's allegations that defendants violated his constitutional rights during his arrest and when they unlawfully searched and seized his property, if true, would affect plaintiff's ongoing criminal proceedings in the Virginia state courts. As such, relief is not presently available to him under § 1983.

In Younger v. Harris, 401 U.S. 37, 43 (1971), the Supreme Court held that principles of comity and federalism preclude federal involvement in a pending state court criminal proceeding unless no adequate state remedies are available and the threatened irreparable injury is "both great and immediate." Were this Court to determine that plaintiff's constitutional rights were violated in the manner he alleges, it would undermine his ongoing prosecution in the Virginia state court; thus, application of the abstention doctrine is appropriate in this instance. Moreover, plaintiff has access through the state court proceeding to much of the relief requested – by filing motions to suppress during the state criminal case. Therefore, none of the extraordinary circumstances which might indicate a great and immediate threat of irreparable injury appear to be present here.

Accordingly, it is hereby

ORDERED that this action be and is DISMISSED WITHOUT PREJUDICE; and it is further

ORDERED that plaintiff's application to proceed in forma pauperis [Dkt. No. 3] and Motion for Appointment of Counsel [Dkt. No. 6] be and are DENIED as moot.

If plaintiff wishes to appeal this decision, he must file a written notice of appeal with the Clerk's Office within thirty (30) days of the date of this Order. See Fed. R. App. P. 4(a). A written notice of appeal is a short statement stating a desire to appeal this Order and noting the date of the Order plaintiff wants to appeal. Plaintiff need not explain the grounds for appeal until so directed by the Court. Failure to timely file a notice of appeal waives the right to appeal this decision.

The Clerk is directed to send of copy of this Order to plaintiff, and to close this civil action.

Entered this 19th day of July 2018.

Alexandria, Virginia

ls/ LMB
Leonie M. Brinkema
United States District Judge

FILED: January 29, 2019

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FOR THE FOURTH CIRCUIT

No. 18-7048
(1:18-cv-00557-LMB-MSN)

KEITH ANDRE ROBINSON

Plaintiff - Appellant

v.

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Defendants - Appellees

O R D E R

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Agee, Judge Thacker, and Judge Harris.

For the Court

/s/ Patricia S. Connor, Clerk