

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 25 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JOSIAH ENGI ISH III,

Plaintiff-Appellant,

v.

THEODORE CAMPAGNOLO, Maricopa
County Superior Court Judge in his
individual and official capacity; et al.,

Defendants-Appellees.

No. 18-16258

D.C. No. 2:17-cv-03221-GMS-JZB
District of Arizona,
Phoenix

ORDER

Before: WALLACE, SILVERMAN, and McKEOWN, Circuit Judges.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

English's petition for rehearing en banc (Docket Entry No. 19) is denied.

No further filings will be entertained in this closed case.

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

JOSIAH ENGLISH III,

Plaintiff-Appellant,

v.

THEODORE CAMPAGNOLO, Maricopa
County Superior Court Judge in his
individual and official capacity; et al.,

Defendants-Appellees.

No. 18-16258

D.C. No. 2:17-cv-03221-GMS-JZB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
G. Murray Snow, Chief Judge, Presiding

Submitted December 17, 2018**

Before: WALLACE, SILVERMAN, and McKEOWN, Circuit Judges.

Arizona state pretrial detainee Josiah English, III, appeals pro se from the
district court's judgment dismissing his 42 U.S.C. § 1983 action challenging his
state court grand jury and child custody proceedings. We have jurisdiction under

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. See Fed. R. App. P. 34(a)(2).

FILED

DEC 21 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

28 U.S.C. § 1291. We review de novo a district court's dismissal under the *Younger* abstention doctrine. *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014). We affirm.

The district court properly dismissed English's action as barred under the *Younger* abstention doctrine because federal courts are required to abstain from interfering with pending state court proceedings where "the federal action would have the practical effect of enjoining the state proceedings." *Id.* at 758-59 (setting forth requirements for *Younger* abstention in civil cases, and explaining that "the date for determining whether *Younger* applies is the date the federal action is filed" (citation and internal quotation marks omitted)).

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

English's request for a temporary restraining order, set forth in his opening brief, is denied.

English's motion for clarification (Docket Entry No. 10) is granted.

AFFIRMED.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
ASH

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Josiah English, III,

Plaintiff,

v.

Theodore Campagnolo, et al.,

Defendants.

No. CV 17-03221-PHX-GMS (JZB)

ORDER

On September 18, 2017, Plaintiff Josiah English, III, who is confined in a Maricopa County Jail, filed a pro se civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed In Forma Pauperis. In a October 2, 2017 Order, the Court granted the Application to Proceed and dismissed the Complaint because Plaintiff had failed to comply with Rule 3.4 of the Local Rules of Civil Procedure. The Court gave Plaintiff 30 days to file an amended complaint that cured the deficiencies identified in the Order.

Or November 9, 2017, Plaintiff filed his First Amended Complaint. In a January 29, 2018 Order, the Court dismissed the First Amended Complaint because Plaintiff had failed to state a claim. The Court gave Plaintiff 30 days to file a second amended complaint that cured the deficiencies identified in the Order.

On March 12, 2018, Plaintiff filed a Second Amended Complaint (Doc. 12). The Court will dismiss the Second Amended Complaint and this action.

1 I. Statutory Screening of Prisoner Complaints

2 The Court is required to screen complaints brought by prisoners seeking relief
3 against a governmental entity or an officer or an employee of a governmental entity. 28
4 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff
5 has raised claims that are legally frivolous or malicious, that fail to state a claim upon
6 which relief may be granted, or that seek monetary relief from a defendant who is
7 immune from such relief. 28 U.S.C. § 1915A(b)(1)-(2).

8 A pleading must contain a “short and plain statement of the claim *showing* that the
9 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8
10 does not demand detailed factual allegations, “it demands more than an unadorned, the-
11 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
12 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
13 conclusory statements, do not suffice.” *Id.*

14 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
15 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
16 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual
17 content that allows the court to draw the reasonable inference that the defendant is liable
18 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible
19 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw
20 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s
21 specific factual allegations may be consistent with a constitutional claim, a court must
22 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*
23 at 681.

24 But as the United States Court of Appeals for the Ninth Circuit has instructed,
25 courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338,
26 342 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less
27 stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v.*
28 *Pardus* 551 U.S. 89, 94 (2007) (per curiam)).

1 **II. Second Amended Complaint**

2 In this nine-count Second Amended Complaint, Plaintiff names 28 different judges,
3 attorneys, police officers, and Arizona Department of Child safety officers, as well as the
4 City of Phoenix, Maricopa County, the Governor of the State of Arizona, and the State of
5 Arizona itself. Plaintiff's claims arise from his arrest and ongoing prosecution for first-
6 degree murder, as well as the effect that criminal prosecution is having on parallel state
7 child custody proceedings. Broadly put, Plaintiff alleges that fabricated and misleading
8 evidence was presented to a grand jury and is being used against him (Count One); that
9 he was improperly referred to as "defendant" during grand jury proceedings (Count
10 Two); that prosecutors elicited perjured testimony during grand jury proceedings (Count
11 Three); that his child custody proceedings are being adjudicated before his criminal
12 charges have been resolved, implicating his due process and Fifth Amendment right not
13 to incriminate himself (Count Four); that Arizona Revised Statute § 8-533 (which
14 describes who may file a petition to revoke parental rights, and on what grounds) is
15 constitutionally vague or overbroad (Count Five); that police officers improperly took
16 him into custody (Count Six); that Arizona Revised Statute § 13-3905 (which allows law
17 enforcement officers to seek a judicial order permitting the detention of an individual for
18 purposes of obtaining evidence of identifying physical characteristics) is
19 "unconstitutional on its face [] because it circumvents the [Fourth] Amendment
20 requirement that police establish probable cause" (Count Seven); that a judge fabricated
21 evidence that is being used against him in his criminal proceeding (Count Eight); and that
22 police officers illegally searched his apartment and seized certain evidence (Count Nine).
23 As relief, Plaintiff seeks declaratory judgments that the Defendants have violated his
24 rights, and that Arizona Revised Statutes §§ 8-533 and 13-3905 are unconstitutional; an
25 injunction against "any further action that could result in the termination of the parent-
26 child relationship" until his criminal charges are resolved; and an injunction preventing
27 "any criminal or civil prosecution which derived from [Arizona Revised Statute §] 13-
28 3905 and enjoining the State of Arizona from seizing the person or property of any

1 person pursuant to [Arizona Revised Statute §] 13-3905" or the Fourth Amendment.

2 **III. Failure to State a Claim**

3 As discussed in the Court's previous Order, the abstention doctrine set forth in
 4 *Younger v. Harris*, 401 U.S. 37 (1971), prevents a federal court in most circumstances
 5 from directly interfering with ongoing criminal proceedings in state court. The *Younger*
 6 abstention doctrine also bars requests for declaratory and monetary relief for
 7 constitutional injuries arising out of a plaintiff's ongoing state criminal prosecution.

8 *Mann v. Lett*, 781 F.2d 1448, 1449 (9th Cir. 1986) (*per curiam*). The policies underlying
 9 *Younger* are also fully applicable to noncriminal judicial proceedings when important
 10 state interests are involved, such as in custody or parental rights proceedings. *Middlesex*

11 *County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982). "Where
 12 vital state interests are involved, a federal court should abstain 'unless state law clearly
 13 bars the interposition of the constitutional claims.'" *Id.* (quoting *Moore v. Sims*, 442 U.S.

14 415, 426 1979)). Only in limited, extraordinary circumstances will the *Younger* doctrine
 15 not bar federal interference with ongoing state criminal proceedings. Such circumstances
 16 include when a prisoner alleges that he is being subjected to double jeopardy. *See*

17 *Mannes v. Gillespie*, 967 F.2d 1310, 1312 (9th Cir. 1992). Speedy trial claims may also
 18 be reviewed if a detainee is seeking to compel the state to bring him to trial, rather than
 19 seeking dismissal of the charges, and the detainee has exhausted all of his state court

20 remedies. *See In re Justices of Superior Court Dep't of Mass. Trial Court*, 218 F.3d 11,

21 18 & n.5 1st Cir. 2000). *or ixx. 7*

22 In deciding whether *Younger* abstention applies, the Ninth Circuit applies the
 23 three-pronged test outlined by the Supreme Court in *Middlesex*: (1) the state proceedings
 24 are ongoing, (2) the proceedings implicate important state interests, and (3) the state
 25 proceedings provide an adequate opportunity to raise federal questions. *Fresh Int'l Corp.*

26 *v. Agric. Labor Relations Bd.*, 805 F.2d 1353, 1357-58 (9th Cir. 1986) (citing *Middlesex*,
 27 457 U.S. at 432).

28 ///

1 Here, each of the three *Middlesex* requirements are met: Plaintiff's claims squarely
2 implicate his ongoing criminal and custodial proceedings; the proceedings implicate
3 important state interests in the prosecution of criminal activity and parental rights; and
4 Plaintiff has ample opportunity to challenge alleged prosecutorial misconduct, the
5 sufficiency of the indictment and evidence, alleged wrongful acts during grand jury
6 proceedings, and any determinations related to his parental rights in the state courts.
7 Accordingly, Plaintiff has not demonstrated that extraordinary circumstances exist that
8 warrant this Court's interference in those proceedings. Abstention in this case is
9 appropriate, and the Court will thus dismiss this action without prejudice. *See Beltran v.*
10 *State of California*, 871 F.2d 777, 782 (9th Cir. 1989) (*Younger* abstention requires
11 dismissal of the federal action). Further, because Plaintiff's claims cannot be cured by
12 amending it, the Court will dismiss this action without leave to amend.

13 **IT IS ORDERED:**

14 (1) Plaintiff's Second Amended Complaint (Doc. 12) and this action are
15 dismissed as barred by *Younger*, and the Clerk of Court must enter judgment
16 according y.

17 (2) The docket shall reflect that the Court, pursuant to 28 U.S.C. § 1915(a)(3)
18 and Federal Rules of Appellate Procedure 24(a)(3)(A), has considered whether an appeal
19 of this decision would be taken in good faith and finds Plaintiff may appeal in forma
20 pauperis.

21 Dated this 5th day of June, 2018.

22 
23 _____
24 Honorable G. Murray Snow
25 United States District Judge
26
27
28

Appendix D

Arizona Revised Statutes Annotated

Title 13. Criminal Code (Refs & Annos)

Chapter 38. Miscellaneous

Article 7. Arrest (Refs & Annos)

A.R.S. § 13-3905

§ 13-3905. Detention for obtaining evidence of identifying physical characteristics; definition

Effective: September 21, 2006

Currentness

A. A peace officer who is engaged, within the scope of the officer's authority, in the investigation of a felony may make written application upon oath or affirmation to a magistrate for an order authorizing the temporary detention, for the purpose of obtaining evidence of identifying physical characteristics, of an identified or particularly described individual residing in or found in the jurisdiction over which the magistrate presides. The order shall require the presence of the identified or particularly described individual at such time and place as the court shall direct for obtaining the identifying physical characteristic evidence. The magistrate may issue the order on a showing of all of the following:

not probable Cause

1. Reasonable cause for belief that a felony has been committed.

2. Procurement of evidence of identifying physical characteristics from an identified or particularly described individual may contribute to the identification of the individual who committed such offense.

3. The evidence cannot otherwise be obtained by the investigating officer from either the law enforcement agency employing the affiant or the department of public safety.

B. Any order issued pursuant to this section shall specify the following:

1. The alleged criminal offense that is the subject of the application.

2. The specific type of identifying physical characteristic evidence that is sought.

3. The relevance of the evidence to the particular investigation.

hair samples, comparative personal appearance or photographs of an individual.

Credits

Added as § 13-1424 by Laws 1971, Ch. 75, § 1. Renumbered as § 13-3905 by Laws 1977, Ch. 142, § 132, eff. Oct. 1, 1978. Amended by Laws 1999, Ch. 261, § 35; Laws 2006, Ch. 101, § 4.

NOTES OF DECISIONS

Validity

Statute governing detention for obtaining evidence of identifying physical characteristics A.R.S. § 13-3905 was not unconstitutional due to a lack of procedural safeguards. State v. Via (1985) 146 Ariz. 108, 704 P.2d 238, certiorari denied 106 S.Ct. 1268, 475 U.S. 1048, 89 L.Ed.2d 577. Arrest ~~on~~ 63.1 ↑ ↗

Evidence obtained during other investigations

Provisions of statute governing detention for obtaining evidence of identifying physical characteristics, A.R.S. § 13-3905, were not violated, notwithstanding defendant's contention that his detention in credit card fraud investigation was merely a pretext to improperly investigate crimes as to which probable cause did not exist, namely murder of and theft from victim. State v. Via (1985) 146 Ariz. 108, 704 P.2d 238, certiorari denied 106 S.Ct. 1268, 475 U.S. 1048, 89 L.Ed.2d 577. Arrest ~~on~~ 63.1

A. R. S. § 13-3905, AZ ST § 13-3905

Current through the First Regular Session of the Fifty-Third Legislature (2017)

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

Appendix E

COUNTY OF MARICOPA, STATE OF ARIZONA

201700000180072

STATE OF ARIZONA)

)
COUNTY OF MARICOPA)

NO.

2017-001052

ORDER FOR OBTAINING IDENTIFYING EVIDENCE

Proof of affidavit having this day been made by Detective Tyler Kipper #8151, a sworn Police Officer of the City of Phoenix, Arizona Police Department.

IT IS THE FINDING OF THIS COURT:

I

That there is probable cause to believe that the crime of Homicide has been committed, such offense being a felony punishable by more than one year in the state prison;

II

The procurement of buccal swabs from Josiah English a black male D.O.B. ~~1980~~, may contribute to the identification of the individual who committed the offense.

III

That such evidence cannot be obtained by Detective Tyler Kipper #8151 from either the Phoenix Police Department or the Criminal Identification Division of the Arizona Department of Public Safety;

IT IS HEREBY ORDERED:

753

Jan. 31, 2017, 2:16 PM

Case: 18-1625 10/12/2018, ID: 11047009, DktEntry:

That Detective Tyler Kipper #8151 of the City

Department is authorized to effectuate this order;

Page 1470 of 1957/8
Phoenix Police

II

That buccal swabs from the person of Josiah English a black male D.O.B. ~~1980~~ are to be obtained;

III

That this evidence is to be obtained for use in connection with the crime of aggravated assault;

IV

That this evidence is to be used to assist in the identification of Josiah English a black male D.O.B. ~~1980~~, as the perpetrator of the offense listed herein;

V

That the evidence shall be taken from said person at the facilities of the Phoenix Police Department or an Arizona Department of Corrections facility;

VI

That where applicable, evidence shall be taken in a medically approved fashion;

VII

That the evidence herein authorized to be obtained shall be taken as soon as reasonably practical following the issuance of this order, however, in no event may Josiah English a black male D.O.B. ~~1980~~, be detained for more than (3) hours for the purpose of executing this order;

VIII

That said person shall accompany Detective Tyler Kipper #8151 or his designee with no interference or resistance, and shall cooperate by taking no action that would interfere with the effective taking of said evidence;

IX

754

That this ord. shall be valid until it is executed, but in any event not beyond fifteen (15) days from the date of issuance;

X

That this order is to be returned to this court not later than Thirty (30) days after the date of issuance.

GIVEN UNDER MY HAND and dated this the 31 day of Jan, 2017.

HONORABLE MARIA K. WASHINGTON (Judge)
MARICOPA COUNTY SUPERIOR COURT

Court, Maricopa County, Arizona

Appendix F



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
CHILD & FAMILY PROTECTION DIVISION

JOHN S. JOHNSON
DIVISION CHIEF COUNSEL

April 5, 2019

Josiah English, III
Booking #T337357
Lower Buckeye Jail
3250 W. Lower Buckeye Road
Phoenix, AZ 85009

Re: English JD33768/JS18922

Dear Mr. English:

As you may know, the Department has requested to amend and file a Third Severance Petition. The Department is no longer pursuing the termination ground of neglect based on the domestic violence and alleged murder of Ms. Gutierrez and is only proceeding on the grounds of nine months-time-in-care and fifteen months-time-in-care.

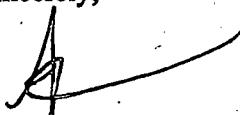
To determine Indian blood quantum of the children
I received the postcard stating you filed a Motion for Genetic Testing, Objection to the Second Amended Severance Petition and Notice of Intent to Depose Witnesses. The Department's Objection to your Motion for Genetic Testing is included with this letter. The Department will file a written response to your Notice of Intent to Depose Witnesses.

The Department intends to call the following witnesses:

- Patrick Rogge, DCS Specialist
- Cassandra Alves, Former DCS Specialist
- Dr. Christina Lebovitz
- Mr. Aaron Wolfley
- Ms. Landy Calzoncit-Gutierrez
- Mr. Josiah English, III

A copy of our final list of exhibits is also included with this letter.

Sincerely,


Andrea Kawamura
Assistant Attorney General

109

Josiah English III

Booking # T337357

Pretrial Detainee in the Maricopa County

Jail located at: 3250 W. Lower Buckeye Rd.

Phoenix, AZ 85009 (Lower Buckeye Jail)

In The
Supreme Court of The United States

Josiah English III
(Petitioner)

No. _____

vs.

Theodore Campagnolo, et. al.
(Respondents)

on Petition For a Writ of Certiorari To
The United States Ninth Circuit
Court of Appeals / case # 18-16258

Declaration of Inmate Filing

I am a pretrial detainee confined in a Maricopa County Arizona Jail. Today, July 23rd 2019, I am depositing Josiah English III's "Petition For Writ of Certiorari" in this institution's internal mail system. First-class postage is being prepaid by me. I declare under penalty of perjury that the foregoing is true and correct (See 28 U.S.C. § 1746 and 18 U.S.C. § 1623). Respectfully, pro se petitioner, Josiah English III.