

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-12253-G

ELLIS KEYES,

Plaintiff-Appellant,

versus

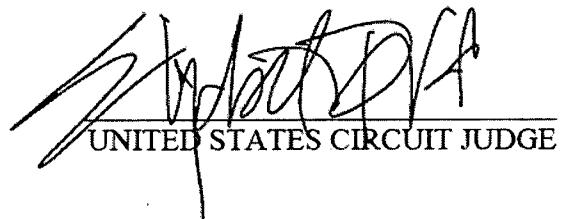
MATT WILSON,
CITY OF FORT PAYNE, ALABAMA,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

ORDER:

Appellant's motion for leave to proceed *in forma pauperis* is DENIED because the appeal is frivolous. *See Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002).



UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-12253-G

ELLIS KEYES,

Plaintiff - Appellant,

versus

MATT WILSON,
CITY OF FORT PAYNE, ALABAMA,

Defendants - Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Ellis Keyes has failed to pay the filing and docketing fees to the district court within the time fixed by the rules, effective October 21, 2020.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Lee Aaron, G, Deputy Clerk

FOR THE COURT - BY DIRECTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
PIKEVILLE

ELLIS KEYES,)
)
 Plaintiff,) No. 7:19-CV-41-REW
)
 v.)
)
 MATT WILSON and CITY OF) ORDER
 FORT PAYNE, ALABAMA,)
)
 Defendants.)

*** * *** * ***

In this § 1983 action (DE 1 – Complaint), *pro se* Plaintiff Ellis Keyes moves to proceed *in forma pauperis*. DE 3. The Court, on review of Keyes’s sworn indigency claims, *see id.*, finds the 28 U.S.C. § 1915(a)(1) requirements satisfied and grants Keyes pauper status.

Accordingly, the Court screens this matter under 28 U.S.C. § 1915(e)(2). *See id.* (“Notwithstanding any filing fee . . . the court shall dismiss the case at any time if the court determines that . . . (B) the action . . . is frivolous . . . [or] fails to state a claim on which relief may be granted[.]”); *see also Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999) (Even in the absence of an IFP request, “a district court may, at any time, *sua sponte* dismiss a complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure when the allegations of a complaint are totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion.”).

A complaint must set forth sufficient allegations to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). The Court screens frivolous complaints. *See Neitzke v. Williams*, 109 S. Ct. 1827, 1831–32 (1989) (describing as “frivolous[,]”

A 3

claims lacking “an arguable basis either in law or in fact”); *Apple*, 183 F.3d at 479. When testing *pro se* pleading sufficiency, the Court applies a tolerant construction, accepting as true all non-conclusory factual allegations and liberally construing legal claims toward encompassing a valid claim for relief. *Davis v. Prison Health Servs.*, 679 F.3d 433, 437-38 (6th Cir. 2012). The Court’s liberal construction obligation has limits. *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989); *Wilson v. Lexington Fayette Urban County Government*, No. 07-cv-95-KSF, 2007 WL 1136743 (E.D. Ky. April 16, 2007). The Court will not “conjure allegations on a litigant’s behalf.” *Erwin v. Edwards*, 22 F. App’x. 579, 580 (6th Cir. 2001); *see also Coleman v. Shoney’s, Inc.*, 79 F. App’x 155, 157 (6th Cir. 2003) (“Pro se parties must still brief the issues advanced with some effort at developed argumentation.”).

Background

Keyes explains that Fort Payne, Alabama, law enforcement arrested him on May 12, 2019, and charged him with carrying a concealed weapon without a permit. DE 1 at 2. Keyes is out on bail pending a July 29, 2019, hearing to answer the charges. *Id.* Keyes, referencing the Second Amendment and Fourteenth Amendments, contends that the Alabama officers conducted an unlawful search and seizure and lacked probable cause to arrest him. *Id.* at 1-2. Keyes seeks damages, injunctive relief, and removal of the state criminal proceeding to this Court for adjudication. *Id.* at 3.

The Court, on full review, concludes that this matter should, per *Younger v. Harris*, 91 S. Ct. 746 (1971) and its progeny, be stayed pending resolution of the state proceedings. “*Younger* holds that federal courts must abstain from taking jurisdiction over federal constitutional claims that may interfere with ongoing state proceedings.” *Gakuba v. O’Brien*, 711 F.3d 751, 753 (7th Cir. 2013). *Younger* applies when state criminal proceedings are (1) currently pending, (2) involve

an important state interest, and (3) afford “the plaintiff an adequate opportunity to raise constitutional claims.” *Carroll v. City of Mount Clemens*, 139 F.3d 1072, 1074 (6th Cir. 1998). Here, Keyes’s suit “for damages under 42 U.S.C. § 1983 . . . is a textbook case for *Younger* abstention.” *Id.* at 1075. The Alabama criminal charges pend, the state has a clear and vital interest in enforcing its criminal laws, and Plaintiff may challenge the constitutionality of the search, seizure, and his arrest in the Alabama proceedings. Thus, the Court, out of “an abundance of caution” and with a nod to comity, stays this suit. *Habich v. City of Dearborn*, 331 F.3d 524, 534 n.4 (6th Cir. 2003) (“[S]taying the suit protects the plaintiff whose federal claims were not resolved on the merits in state court.”).¹

For these reasons and under the applicable standards, the Court **ORDERS** as follows:

1. The Court **GRANTS** DE 3;
2. The Court **STAYS** this matter pending resolution of Keyes’s Alabama criminal proceedings; and

¹ The Court recognizes that the stay amounts to an effective dismissal of Keyes’s removal claim. This result is intentional. Keyes cites to no authority for this relief. Despite forgiving *pro se* claim construction, the Court, as stated, will not “conjure allegations on a litigant’s behalf.” *Erwin*, 22 F. App’x. at 580. Moreover, although 28 U.S.C. § 1443 authorizes removal of criminal prosecutions under certain circumstances, none is present here. First, § 1443 permits removal only to “the district court of the United States for the district and division embracing the place wherein it is pending[.]” 28 U.S.C. § 1443. Second, Plaintiff does not claim an equal protection violation and thus subsection (1) is inapplicable. *Id.* § 1443(1) (authorizing removal for prosecutions “[a]gainst any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof”). Finally, subsection (2) removal is unavailable to Keyes because he is not a “federal officer[,]” a “person[] assisting such [an] officer[] in the performance of his official duties, or a state officer. *Detroit Police Lieutenants & Sergeants Ass’n v. City of Detroit*, 597 F.2d 566, 568 (6th Cir. 1979) (internal citations and quotation marks omitted) (describing the categories of defendants that may invoke § 1443(2)). Thus, the Court **dismisses** the removal claim as frivolous.

3. Keyes **SHALL** file a status report regarding the status of his criminal case within **90 days** of this Order. The Court bases this deadline on Plaintiff's representations regarding the Alabama schedule.

If the state court schedule changes, Keyes **may** request an extension. **However, if Keyes fails to submit the ordered report or request an extension on or before the 90-day deadline, the Court will likely dismiss this matter (without prejudice) for failure to prosecute.** Keyes initiated this suit and it is his responsibility to litigate it. Here, that duty includes a specific obligation to keep the Court apprised of the related criminal case's status.

This 20th day of May, 2019.



Signed By:

Robert E. Wier *REW*

United States District Judge

U.S. District Court

FILED

Northern District of Alabama

Keyes

2020 FEB - 5 A 10:49

v.

U.S. DISTRICT COURT
N.D. OF ALABAMA

Wilson et al.

4:19-cv-01717-CLM

Status Report 02-18-20

Plaintiff respectfully submits status report update with the Municipal Court proceedings below to include Motion To Dismiss attached here with offer for settlement, with all due respect, as a matter of law in the interest of justice, the pending charge of Carrying Concealed Weapon without Permit to be dismissed in compliance with Alabama, Kentucky and Federal Constitutional Law and in compliance with this courts INITIAL ORDER: All parties should give early consideration to the possibility of settlement to avoid unnecessary costs and fees.

Respectfully



Ellis Keyes, Movant Propria Persona Feb' 4th, 2020

P O Box 1073

Whitesburg Kentucky 41858-1073

(606) 821-9815

elliskeyes@yahoo.com

IN THE MUNICIPAL COURT OF FORT PAYNE, ALABAMA
MUNICIPALITY OF FORT PAYNE

V.

ELLIS LEONARD KEYES, DEFENDANT

Case # MC19-261 Monday February 24th, 2020 4PM

MOTION TO DISMISS

Now comes Ellis Keyes and moves to dismiss the misdemeanor. Pursuant to Rules 13.5(b) and (c)(1) by a motion to dismiss under Rule 15.1. Under this rule, the form or styling of the motion is not important, and substance shall govern over form. Rule 15.2. Objections based on defects in the commencement of the proceeding or in the charge. 15.3. (d) The lack of subject matter jurisdiction or the failure of the charge to state an offense may be raised by the court or by motion of the defendant at any time during the pendency of the proceeding. . . .

Alabama honors licenses issued by any state that also honors Alabama's Licenses, provided that the license holder is not a resident of Alabama. 13A-11-85 Reciprocity for Licenses Issued in Other States.

Kentucky respects the 2nd amendment and allows Alabama citizens the same respect to honor their permits to carry concealed from the state of Alabama in the State of Kentucky. So it may please the court to grant dismissal and settle to dismiss adverse claims by not prosecuting any further, to save the time and cost of litigation in state and federal district courts and allow an honorable resolution with the least inconvenience to all concerned.

A NEW SECTION OF KRS CHAPTER 237 AS FOLLOWS: 5 (1) Persons age twenty-one (21) or older, and otherwise able to lawfully possess a firearm, may carry concealed firearms or other concealed deadly weapons 7 without a license in the same locations as persons with valid licenses issued 8 under KRS 237.110.

Being that I am domiciled in Kentucky, in order to be penalized for an out of state offence, the state of Kentucky must punish the same conduct. However Kentucky is a Constitutional Carry State pursuant to 2019 Senate Bill 150, any person age twenty-one (21) or older, and otherwise able to lawfully possess a firearm, may carry concealed firearms or other concealed deadly weapons without a license in the same locations as persons with valid Kentucky CCDW license issued under KRS 237.110. Kentucky allows any person not prohibited from possessing a firearm to carry a loaded or unloaded firearm in a vehicle in any closed container, compartment or storage space installed as original equipment in a motor vehicle by its manufacturer, including but not limited to a glove compartment, center console or seat pocket regardless of whether the enclosed container or storage space, or compartment is locked, unlocked or does not have a locking mechanism. No person or organization, public or private, may prohibit another person from keeping a loaded or unloaded firearm or ammunition, or both, in a vehicle.... Kentucky law provides that the firearm may be removed from the vehicle or handled in the case of self-defense, defense of another, defense of property or as authorized by the owner, lessee or occupant of the property. An employer that fires, disciplines, demotes or otherwise punishes an employee who is lawfully exercising one of these rights is liable in a civil action for damages and an injunction.

Reciprocity for licenses issued in other states.

Alabama authorizes that: A person licensed to carry a handgun in any state shall be authorized to carry a handgun in this state. This section shall apply to a license holder from another state only while the license holder is not a resident of this

state. A license holder from another state shall carry the handgun in compliance with the laws of this state: AL Code § 13A-11-85 (2013)

The same logic is clearly shown by the Concealed Carry Reciprocity Act of 2019, introduced with the language ... **by any state or be eligible to carry a concealed firearm in his or her state of residence.** (Emphasis added) as is pursuant to the supreme law of the land, the U S Constitution Second Amendment.

CONCLUSION

It is unlikely this will ever happen again because there is no case to be made under the circumstances to prosecute defendant for having no permit in Alabama so I offer to settle and dismiss the related civil rights action and resolve this matter.

By law of the states of Kentucky and Alabama and in expressed will of congress shown, there is no legal basis or case to prosecute defendant for the charge of not having a permit and it is just and proper to dismiss the criminal charge as moot, null and void.

Therefore to settle this matter let it be dismissed and I will not prosecute in the related federal civil action because there will be no further need to. Kentucky honors Alabamians permits on the grounds of reciprocity with full faith and credit. The U S Constitution as the supreme law and the second amendment justifies therefore to let motion to dismiss be granted. Respectfully

Ellis Keyes, Movant Propria Persona Feb' 4th, 2020

P O Box 1073 Whitesburg Kentucky 41858-1073

Proposed ORDER

Upon good cause shown, Defendant motion to dismiss is granted. Return the Glock taken from Ellis Leonard Keyes by all means available without delay.

Dated _____

Judge, Municipal court of Fort Payne Alabama

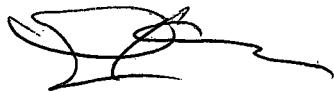
AFFIDAVIT

NOW comes defendant, ELLIS KEYES, who having been duly sworn did depose and say: In the interest of justice please dismiss the criminal charge against me. The neighboring county of Wise Virginia has declared itself a 2nd amendment Sanctuary with broad support, as has the jurisdictions of Harlan Kentucky and my own home place in Eastern Kentucky's Letcher County. I request my property be returned to me, I have committed no crime or harm of any kind to anyone. I will self-correct from this experience holding all blameless upon dismissal of the criminal charge.

Back pain and risk of exposure related pneumonia due to Cardio Obstructive Pulmonary Disease makes my ability and endurance limited, requires me to stay near home.

I waive oral argument, submitting by affidavit my testimony. I am completely innocent of the charge. I have not committed any crime or caused harm of any kind.

Respectfully



Ellis Keyes

Sworn and subscribed before me this

3rd Day of February, 2020.

Linda Bell
my Commission Expires: 12-27-20
NOTARY

PROOF OF SERVICE

I, Ellis Keyes, declare that on this date I have served the enclosed Motion to Dismiss, Affidavit and Status Report, by depositing an envelope containing the above document in the United States mail properly addressed to each of them and with first-class postage prepaid, mailed this 14th day of February, 2020, those served copies by certified mail return receipt to the following: Glenn Shedd, City of Fort Payne Judge, 100 Alabama Ave NW, Fort Payne, AL 35967 and Steve Bussman, City Prosecutor, 100 Alabama Ave NW, Fort Payne, AL 35967 and Donna Roberts, Magistrate, 100 Alabama Ave NW, Fort Payne, AL 35967 and Clerk of the Municipal Court, 100 Alabama Ave NW, Fort Payne, AL 35967.

MUNICIPAL COURT, City of Fort Payne, 100 Alabama Ave NW, Fort Payne, AL 35967. (265) 845-6728 & United States District Court, Sharon N. Harris, Clerk, Hugo Black Federal Courthouse, 1729 5th Avenue North, Birmingham Alabama 35203

Respectfully Submitted.



Ellis Keyes, Propria Persona, P O Box 1073, Whitesburg Kentucky 41858-1073

(606) 821-9815 elliskeyes@yahoo.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

ELLIS KEYES,

Plaintiff,

v.

MATT WILSON, et al.,

Defendants.

Case No. 4:19-CV-01717-CLM

DISMISSAL ORDER

This case is before the court on Plaintiff Keyes' failure to comply with this court's May 12, 2020 order (doc. 22), as well as several of this court's previous orders. In its May 12, 2020 order, this court directed Plaintiff Keyes, who is proceeding *pro se*, to provide a status report on his pending Alabama state court criminal case. The order was issued after the court has received multiple status reports from Plaintiff Keyes which included insufficient information to determine the status of Plaintiff Keyes' criminal proceeding.

The court's most recent order included language that warned Plaintiff Keyes that failure to completely comply with the order "SHALL result in the dismissal of this case for failure to prosecute and failure to comply with the court's orders." Doc. 22. (emphasis in original). Specifically, the court ordered Keyes to provide the following information:

1. A narrative status report which explains what has occurred in Keyes' related criminal proceeding in state court, including whether he appeared before the court on February 24, 2020, what correspondence he has received if he failed to appear, and the status of his motion to dismiss;
2. An explanation of the attached service notifications that Keyes provided in his last status report, including how the individuals served relate to this case, what documents Keyes served upon those individuals, and which case the service was intended for;
3. A copy of the docket sheet and all documents Keyes has sent or received in the related state court case.

Id.

The court requested very specific information regarding Keyes' criminal proceeding because Keyes had repeatedly failed to provide information on the status of his criminal proceedings in the past. *See, e.g.* Docs. 21, 18, 17.

Keyes responded to the court's order on May 18, 2020. Doc. 23. In his response, Keyes mentioned his motion to dismiss by stating "Motion to dismiss offer for settlement filed and served had no response from defendant bringing us to standstill." This provides this court with little clarity, as Keyes is the defendant in the underlying criminal proceeding. More importantly, Keyes completely ignored

all of the other requirements that this court directed Keyes upon, despite the court's warning that a failure to address each of the topics listed above would lead to dismissal.

The Federal Rules of Civil Procedure "expressly authorize a district court to dismiss a claim ... or entire action for failure to prosecute or obey a court order or federal rule." *State Exchange Bank v. Hartline*, 693 F.2d 1350, 1352 (11th Cir. 1982); *see* Fed. R. Civ. P. 41(b-c). Additionally, a district court has "inherent ... authority to enforce its orders and ensure prompt disposition of legal actions." *State Exchange*, 693 F.2d at 1352.

Plaintiff Keyes has failed to obey the court's May 12, 2020 order (doc. 22), as well as previous orders, despite the court's express warning about the consequences of his failure to comply. Accordingly, the court hereby **ORDERS** that this action shall be, and is, **DISMISSED without prejudice** for failure to prosecute.

The Clerk of Court is **DIRECTED** to mail a copy of this Order to Plaintiff Keyes at his address of record.

DONE and **ORDERED** this 29th day of May, 2020.



COREY L. MAZE
UNITED STATES DISTRICT JUDGE

Clerk's Office.
available in the
from this filing is
Additional material