

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16-2115

SYED AFIR JAFFERY, M.D.,
Appellant

v.

THE ATLANTIC COUNTY PROSECUTOR'S OFFICE;
JAMES P. MCCLAIN, individually and in his capacity as the Atlantic County
Prosecutor; DANIELLE S. BUCKLEY; individually, and in her capacity as
Assistant Atlantic County Prosecutor; EGG HARBOR CITY POLICE
DEPARTMENT; RAYMOND DAVIS, Individually and as Chief of the Egg Harbor
Police Department; DETECTIVE HEATHER STUMPF

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil No. 1-15-cv-06937)
District Judge: Honorable Noel L. Hillman

Submitted Pursuant to Third Circuit LAR 34.1(a)
January 20, 2017

Before: AMBRO, VANASKIE, and SCIRICA, Circuit Judges

(Filed: June 19, 2017)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

SCIRICA, *Circuit Judge*

Appellant Syed Afir Jaffery is under indictment in the Superior Court of New Jersey, Atlantic County, on charges arising out of alleged sexual misconduct towards patients at his neurology practice. Jaffery filed suit under 42 U.S.C. §§ 1983 and 1988 against New Jersey prosecutors and police officers in the United States District Court for the District of New Jersey alleging violations of the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, and seeking damages and an injunction against further prosecution. The District Court granted defendants' motion to dismiss on the ground of *Younger* abstention. We will affirm.¹

I.

Jaffery is a licensed physician who practiced neurology in Egg Harbor, New Jersey. In December 2014, several of Jaffery's patients informed the Egg Harbor Township Police Department that Jaffery touched them inappropriately during medical exams. On December 23, 2014, Egg Harbor Police Detective Heather Stumpf filed Complaints based on the allegations of three of Jaffery's former patients, and a New Jersey state judge found probable cause and issued warrants for Jaffery's arrest. Jaffery was arrested the same day at his medical offices. On February 25, 2015, thirty-two additional Complaints were issued based on incidents with numerous other patients. The Complaints charged Jaffery with various crimes, including aggravated criminal sexual contact, harassment, lewdness, and sexual assault.

¹ The District Court had jurisdiction under 28 U.S.C. § 1331. We have jurisdiction to review the District Court's *Younger* abstention order under 28 U.S.C. § 1291. *Lui v. Comm'n on Adult Entertainment Establishments*, 369 F.3d 319, 325 (3d Cir. 2004).

On September 17, 2015, prior to issuance of an indictment, Jaffery filed a complaint in the United States District Court for the District of New Jersey against the Atlantic County Prosecutor's Office, the Atlantic County Prosecutor James P. McClain, Assistant Atlantic County Prosecutor Danielle S. Buckley, the Egg Harbor Police Department, Egg Harbor Police Chief Raymond Davis, and Egg Harbor Detective Heather Stumpf. Jaffery asserted claims under 42 U.S.C. §§ 1983 and 1988 and alleged the ongoing criminal investigation and prosecution violated the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. Jaffery sought compensatory and punitive damages, and an injunction against further prosecution.

On September 18, 2015, Jaffery sought an *ex parte* temporary restraining order against defendants. The District Judge declined to issue the temporary restraining order based on *Younger* abstention. Jaffery subsequently filed an Amended Complaint and a motion for a preliminary injunction against defendants.

In the New Jersey criminal action, on September 30, 2015, an Atlantic County grand jury returned a nineteen-count indictment against Jaffery, including eighteen counts of fourth degree criminal sexual contact, in violation of N.J. Stat. Ann. § 2C:14-3(b), and one count of second degree sexual assault, in violation of N.J. Stat. Ann. § 2C:14-2(c)(1).² The indictment was based on nineteen alleged incidents with eighteen different victims.

After issuance of the indictment in the state action, defendants in the federal action

² Following a three-week jury trial, on July 25, 2016, Jaffery was acquitted on the charges in the indictment relating to his conduct with one patient. The remaining charges of the indictment are pending and have not yet been tried.

filed a motion to dismiss plaintiff's Amended Complaint under Federal Rule of Civil Procedure 12(b)(1) on grounds of *Younger* abstention. On April 8, 2016, the District Judge issued a Memorandum and Order denying plaintiff's motion for a preliminary injunction and granting defendants' motion to dismiss the Amended Complaint on grounds of *Younger* abstention. Jaffery filed this timely appeal.

II.

Under *Younger v. Harris*, federal courts may abstain in certain circumstances from exercising jurisdiction over a claim where resolution of the claim would interfere with an ongoing state criminal proceeding. 401 U.S. 37 (1971). We exercise plenary review over the legal determination of whether the requirements for abstention have been met, and if those requirements are met, we review the district court's decision to abstain for an abuse of discretion. *Addiction Specialists, Inc. v. Township of Hampton*, 411 F.3d 399, 408 (3d Cir. 2005).

Under *Younger*, "federal courts should abstain from enjoining state criminal prosecutions because of principles of comity and federalism, unless certain extraordinary circumstances exist." *Marran v. Marran*, 376 F.3d 143, 154 (3d Cir. 2004). *Younger* abstention is appropriate if "(1) there are ongoing state proceedings that are judicial in nature; (2) the state proceedings implicate important state interests; and (3) the state proceedings afford an adequate opportunity to raise federal claims." *Schall v. Joyce*, 885 F.2d 101, 106 (3d Cir. 1989). If these three requirements are met, abstention may nonetheless be inappropriate if the federal plaintiff can establish: "(1) the state proceedings are being undertaken in bad faith or for purposes of harassment or (2) some

other extraordinary circumstances exist, such as proceedings pursuant to a flagrantly unconstitutional statute, such that deference to the state proceeding will present a significant and immediate potential of irreparable harm to the federal interests asserted.”

Id.

The District Court correctly concluded the three requirements for *Younger* abstention are met in this case. There are ongoing state criminal proceedings in the Superior Court of New Jersey that are judicial in nature, the state proceedings implicate the important state interest in prosecuting criminal behavior, and the state proceedings provide Jaffery an opportunity to raise federal constitutional defenses to prosecution. *See Younger*, 401 U.S. at 51–52.

Jaffery argues *Younger* abstention is nonetheless inappropriate because the state prosecution is being undertaken in bad faith and without probable cause. “‘Bad faith’ in this context generally means that a prosecution has been brought without a reasonable expectation of obtaining a valid conviction.” *Kugler v. Helfant*, 421 U.S. 117, 126 n.6 (1975); *see also Phelps v. Hamilton*, 59 F.3d 1058, 1065 (10th Cir. 1995) (“Three factors that courts have considered in determining whether a prosecution is commenced in bad faith or to harass are: (1) whether it was frivolous or undertaken with no reasonably objective hope of success; (2) whether it was motivated by the defendant’s suspect class or in retaliation of the defendant’s exercise of constitutional rights; and (3) whether it was conducted in such a way as to constitute harassment and an abuse of prosecutorial discretion, typically through the unjustified and oppressive use of multiple prosecutions.” (citations omitted)). Jaffery argues this standard is met because (1) the investigating

detective did not consult with a medical expert prior to bringing criminal charges, (2) Jaffery was acquitted on two of the charges of the indictment involving one of the alleged victims following trial, and (3) some witnesses made allegedly racially-biased comments in interviews with the police.

The District Court correctly concluded Jaffery's allegations, taken as true, do not demonstrate the state prosecution was undertaken in bad faith. Jaffery disputes the quality of the state's evidence supporting the criminal prosecution, but has not demonstrated there is no reasonable expectation of obtaining a valid conviction. *See Kugler*, 421 U.S. at 126 n.6. Jaffery cites no authority for a constitutional requirement that police and prosecutors retain a medical expert prior to prosecuting a doctor for allegedly criminal actions that occur in the course of medical treatment.³ Moreover, Jaffery's acquittal on some charges does not rise to the level of demonstrating multiple unjustified and oppressive unsuccessful prosecutions. Finally, the witness statements identified by Jaffery alone do not demonstrate the police and the prosecutors in this case are prosecuting him because of his race, rather than because of his alleged conduct.

Alternatively, Jaffery argues extraordinary circumstances warranting federal intervention exist because he was unable to raise his federal constitutional claims in state court prior to trial. The District Court correctly determined Jaffery had failed to demonstrate any procedural bar to raising his federal claims and defenses in the state court proceeding. "[O]rdinarily a pending state prosecution provides the accused a fair

³ Jaffery's reliance on N.J. Stat. Ann. § 2A:53A-27, which requires an affidavit of merit in medical malpractice actions, is misplaced. We decline to apply this statute, which expressly applies only to civil tort claims, in a criminal context.

and sufficient opportunity for vindication of federal constitutional rights.” *Kugler*, 421 U.S. at 124. Jaffery has not shown the state court is “incapable of fairly and fully adjudicating the federal issues,” *see Kugler*, 421 U.S. at 124, as most of the charges against Jaffery have not been tried, nor has Jaffery exhausted his state rights of appeal. In addition, to the extent Jaffery seeks dismissal of the charges against him as a result of constitutional violations, such relief is only available through a writ of habeas corpus. *See Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973).

III.

For the foregoing reasons and those provided in the District Court’s opinion, we will affirm the dismissal of Jaffery’s complaint on *Younger* abstention grounds. In light of this decision, we do not reach Jaffery’s remaining arguments regarding his motion for partial summary judgment and motion for a preliminary injunction.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SYED AFIR JAFFREY, M.D.,

Plaintiff,

v.

THE ATLANTIC COUNTY
PROSECUTOR'S OFFICE, JAMES P.
MCCLAIN, DANEILLE S. BUCKLEY,
EGG HARBOR POLICE DEPARTMENT,
RAYMOND DAVID, and DET. HEATHER
STUMPF,

Defendants.

CIVIL NO. 15-6937 (NLH/KMW)

OPINION

APPEARANCES:

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*On behalf of the Egg Harbor Police Department, Chief
Raymond Davis and Detective Heather Stumpf*

HILLMAN, District Judge

Before the Court are a plethora of motions. Plaintiff moved for a preliminary injunction [Doc. No. 8], the Atlantic City Prosecutor's Office, Prosecutor James P. McClain, and Assistant Prosecutor Danielle S. Buckely moved to dismiss [Doc. No. 19], the Egg Harbor Police Department, Chief Raymond Davis, and Detective Heather Stumpf moved to dismiss [Doc. No. 32], and Plaintiff filed a cross-motion for partial summary judgment as to liability [Doc. No. 40]. For the reasons to be discussed, and as also held in the Court's prior Memorandum Opinion and Order, Plaintiff's civil rights claims solely relate to his ongoing criminal proceedings in state court are therefore barred pursuant to Younger abstention. Accordingly, the Court will dismiss Plaintiff's complaint in its entirety.

I. BACKGROUND

Plaintiff is a neurologist who practiced in Egg Harbor Township, New Jersey. Plaintiff alleges that on December 16, 2014, he called the Egg Harbor Township Police Department to report that one of his patients, Migdalia Ramos, attempted to extort money from him under threat of making a false complaint of sexual misconduct. Ms. Ramos allegedly surreptitiously recorded her medical visit with Plaintiff that day. Plaintiff alleges this video demonstrates no misconduct.

When the police arrived, the parties made cross-complaints against each other, though Plaintiff states his complaint was never pursued. A few days later, Plaintiff was arrested at his office on charges including aggravated criminal sexual contact which allegedly occurred during the medical examinations of three individuals.

Plaintiff states that on December 23, 2014, three criminal complaints were issued against him and thirty-two additional complaints were issued on February 18, 2015. Plaintiff was charged with twenty-three counts of criminal sexual contact. Upon presentment to a grand jury on September 30, 2015, six counts were modified to disorderly person's offenses. As a result of the criminal complaints, Plaintiff's license to practice medicine was suspended.

Plaintiff filed a motion in the Superior Court, Atlantic County, seeking to dismiss the charges against him for lack of probable cause, which was denied. Plaintiff alleges Defendants have failed to consult a medical expert to determine whether his procedures give rise to criminal charges. Thus, Plaintiff alleges Defendants have acted with malice or deliberate indifference to his constitutional rights.

On September 17, 2015, Plaintiff filed a three-count complaint in this Court alleging violations of his constitutional rights under the First, Fourth, Fifth and

Fourteenth Amendments (Count II), seeking a permanent injunction (Count I) and declaratory relief (Count III). On September 18, 2015, Plaintiff filed a motion for a temporary restraining order ("TRO") [Doc. No. 3] to enjoin any state criminal proceedings pursued against him. The Court heard the motion the same day and issued a Memorandum Opinion and Order [Doc. No. 4] denying the TRO because the Court must abstain, in most cases, from issuing injunctions directed to state court criminal proceedings. On September 29, 2015, Plaintiff amended his complaint. In brief, Plaintiff alleges that Defendants "have undertaken plaintiff's criminal prosecution in whole, or in overwhelming part, in bad faith and without probable cause." (Am. Compl. at 2 [Doc. No. 7].)

II. JURISDICTION

In this case, Plaintiff alleges violations of his federal constitutional rights and brings claims pursuant to 42 U.S.C. § 1983. The Court exercises jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. § 1331.

III. DISCUSSION

Plaintiff has renewed his motion for a preliminary injunction. In deciding whether to issue a preliminary injunction, a district court must weigh four factors: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably

injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest. Gerardi v. Pelullo, 16 F.3d 1363, 1373 (3d Cir. 1994). In this case, Plaintiff again fails to pass the first hurdle by showing he will succeed on the merits because, except in rare instances not present here, the Court must abstain from the issuance of injunctions directed to state court criminal proceedings.

Pursuant to the doctrine of abstention developed in Younger v. Harris, 401 U.S. 37 (1971), "federal courts should abstain from enjoining state criminal prosecutions because of principles of comity and federalism, unless certain extraordinary circumstances exist." Marran v. Marran, 376 F.3d 143, 154 (3d Cir. 2004) (citation omitted). As a matter of both equity and comity, federal courts loathe interfering with pending state proceedings particularly in state criminal proceedings where a defendant may invoke federal constitutional protections. Sixth Angel Shepherd Rescue, Inc. v. Schiliro, 596 F. App'x 175, 177 (3d Cir. 2015) (citing Kugler v. Helfant, 421 U.S. 117, 124, 95 S.Ct. 1524, 44 L.Ed.2d 15 (1975); Evans v. Court of Common Pleas, Del. Cnty., Pa., 959 F.2d 1227, 1234 (3d Cir. 1992)).

Three requirements must be met before a federal court can invoke the Younger abstention doctrine: (1) there are ongoing

state proceedings that are judicial in nature; (2) the state proceedings implicate important state interests; and (3) the state proceedings afford an adequate opportunity to raise federal claims. Port Auth. Police Benev. Ass'n, Inc. v. Port Auth. of New York & New Jersey Police Dep't, 973 F.2d 169, 173 (3d Cir. 1992) (citation omitted). "Whenever all three of these requirements are satisfied, abstention is appropriate absent a showing of bad faith prosecution, harassment, or a patently unconstitutional rule that will cause irreparable injury to the plaintiff." Id.

Here, all three requirements for Younger abstention are satisfied. As the Court explained in its prior Memorandum Opinion, there are ongoing state criminal proceedings in the Superior Court that are judicial in nature, the state proceedings implicate important interests related to appropriate medical procedures and alleged criminal sexual abuse, and the state proceedings afford Plaintiff an opportunity to raise his federal claims.

Plaintiff argues that an exception to Younger abstention should apply because the prosecution against him was made in bad faith and he is unable to have his constitutional claims heard in state court. The Court rejects both of these arguments. It is true that federal action is appropriate in cases of proven harassment or prosecutions undertaken by state officials in bad

faith without hope of obtaining a valid conviction or in other extraordinary circumstances where irreparable injury can be shown. Perez v. Ledesma, 401 U.S. 82, 85, 91 S.Ct. 674, 27 L.Ed.2d 701 (1971). Bad faith is shown, for example, where there is evidence of multiple unsuccessful prosecutions. See, e.g., Dombrowski v. Pfister, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965) (bad faith shown from unlawful searches and arrests despite a court order quashing arrest warrants and temporarily restraining prosecutions).

Plaintiff alleges that bad faith is shown because: most victim reports do not show a crime was committed,¹ Detective Stumpf did not have the medical knowledge to understand whether or not Plaintiff's procedures were medically appropriate, the Atlantic City Prosecutor's office has been unwilling to work cooperatively with Plaintiff with respect to his charges, Detective Stumpf did not challenge some of the victims' "racist" victim statements,² and Defendants allegedly informed the victims about their potential civil recovery in order to influence their testimony.

¹ Plaintiff states that "90%" of the victim interviews do not show sexual misconduct occurred. (Pl.'s Br. at 15 [Doc. No. 8].) The implications of that statistic are curious to the Court.

² According to Plaintiff, the racist statement was a reference by a patient to Plaintiff's wife as "that pain management girl." (Pl.'s Br. at 7.)

None of these allegations by Plaintiff show that the action was undertaken in bad faith without hope of obtaining a valid conviction or that the prosecution was motivated by a desire to discourage Plaintiff from exercising his constitutional rights. Plaintiff had thirty-five complaints made against him for criminal sexual contact. Further, there is no evidence that there have been multiple unsuccessful prosecutions.

As to Plaintiff's second argument, federal courts presume that state courts provide an adequate forum to hear constitutional claims and thus refrain from interfering with state proceedings unless the litigant shows there is some procedural barrier. Sixth Angel, 596 F. App'x at 177-78 (citing Gonzalez v. Waterfront Comm'n of N.Y. Harbor, 755 F.3d 176, 184 (3d Cir. 2014)). However, even where a state administrative judge refused to consider federal constitutional claims, the Third Circuit has "nonetheless required abstention when a litigant may raise those claims on appeal in state court." Id. at 178 (citing Gonzalez, 755 F.3d at 183-84 (collecting cases))." Here, Plaintiff argues he is now procedurally barred from challenging probable cause because his initial motion to dismiss his charges in state court was denied. (Pl.'s Cross-Motion at 5 [Doc. No. 40].) Plaintiff has not completed his state criminal proceedings nor exhausted his appeal remedies. Thus, at this time the Court cannot find that there is a

procedural barrier to the assertions of Plaintiff's constitutional claims. The Court is highly confident of the State's ability to hear all of Plaintiff's applicable defenses. Accordingly, the Court will not "slash[] into such a thicket of federal claims interwoven into a pending criminal prosecution." Sixth Angel, 596 F. App'x at 178.

For these reasons, Plaintiff's motion for preliminary injunction will be denied. Further, Plaintiff's complaint must be dismissed in its entirety pursuant to Younger. In its September 18, 2015 Memorandum Opinion and Order [Doc. No. 4], the Court determined that this action was barred by Younger, but that Plaintiff could refile his application if bad faith could be demonstrated. Plaintiff has had a second bite of the apple and has failed to make this showing.

In Younger, the Supreme Court held that federal courts may not enjoin pending state court criminal proceedings, even if there is an allegation of a constitutional violation and even though all jurisdictional and justiciability requirements are met. See 401 U.S. 37, 41-42 (1971). In subsequent cases, the Court has adopted the application of Younger to claims for declaratory and injunctive relief. See Samuels v. Mackell, 401 U.S. 66 (1971) (holding that the principles of Younger are fully applicable to requests for declaratory relief). Further, while the Supreme Court has yet to rule on the application of Younger

to monetary relief, the Third Circuit applies Younger abstention to bar damage suits as well. See Gwynedd Properties v. Lower Gwynedd Township, 970 F.2d 1195 (3d Cir. 1992); Williams v. Hepting, 844 F.2d 138 (3d Cir. 1988); Kalick v. Oaklyn Borough, No. 10-6229 (JBS), 2011 WL 3328841 (D.N.J. Aug. 2, 2011) (dismissing § 1983 claims, including claims for compensatory damages, pursuant to Younger).

Further, if Plaintiff is convicted of his charges, he cannot challenge the fact or duration of his confinement by means of an action under § 1983; rather he must exhaust his state remedies and then, if appropriate, file a federal habeas application. Preiser v. Rodriguez, 411 U.S. 475 (1973). Nor can he seek relief under § 1983 if this Court's adjudication would call into question the validity of his criminal conviction, unless his conviction first has been overturned on appeal or in state or federal collateral proceedings. Heck v. Humphrey, 512 U.S. 477 (1994). If he successfully defends the prosecution against him, then and not before then, may he seek to assert whatever claims become justiciable and ripe at that time. In the meantime, Plaintiff's challenge to any pending criminal charges arising out of the alleged facts must be dismissed without prejudice for failure to state a claim.

The Court is concerned that Plaintiff is attempting to use the federal court to frustrate and impede his state criminal

prosecution. Absent exceptions determined to be inapplicable here, this Court does not adjudicate such matters during the pendency of state criminal proceedings.

IV. CONCLUSION

Plaintiff has failed to show that an exception to Younger abstention applies to this case. Accordingly, Plaintiff's motion for preliminary injunction [Doc. No. 8] and cross-motion for partial summary judgment on liability [Doc. No. 40] will be denied. Defendants' motions to dismiss [Doc. Nos. 19, 32] will be granted and Plaintiff's complaint will be dismissed in its entirety. An appropriate Order will be entered.

Date: April 8, 2016
At Camden, New Jersey

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SYED AFIR JAFFREY, M.D.,

Plaintiff,

v.

CIVIL NO. 15-6937 (NLH/KMW)

THE ATLANTIC COUNTY
PROSECUTOR'S OFFICE, JAMES P.
MCCLAIN, DANEILLE S. BUCKLEY,
EGG HARBOR POLICE DEPARTMENT,
RAYMOND DAVID, and DET. HEATHER
STUMPF,

Defendants.

ORDER

For the reasons expressed in the Opinion entered on this date,

IT IS on this 8th day of April 2016,

ORDERED that Plaintiff's motion for preliminary injunction [Doc. No. 8] and cross-motion for partial summary judgment on liability [Doc. No. 40] be, and the same hereby are, **DENIED**; and it is further

ORDERED that Defendants' motions to dismiss [Doc. Nos. 19, 32] be, and the same hereby are, **GRANTED**. Plaintiff's complaint will be dismissed in its entirety.

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.

At Camden, New Jersey