NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted October 15, 2024*
Decided October 18, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 24-1738

KILROY WATKINS,
Plaintiff-Appellant,

v.

ELIJAH MUHAMMAD, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:22-cv-06377

Steven C. Seeger,
Judge.

O R D E R

Kilroy Watkins, an Illinois state detainee, sued several police officers and officials in the City of Harvey for constitutional violations related to his arrest on state criminal

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

charges and his subsequent detention. *See* 42 U.S.C. § 1983. The district court stayed this case under *Younger v. Harris*, 401 U.S. 37, 43–44 (1971), pending resolution of his criminal proceeding in state court. We affirm.

In November 2022, Watkins filed his § 1983 complaint from the Cook County Jail, where he has been detained until his state criminal trial can take place. His lawsuit arises from the events underlying the state criminal case against him. As he alleges, police in the City of Harvey unlawfully seized and arrested him without a warrant or probable cause. He says that the arresting officers, Elijah Muhammad and Thomas Kant, then transported him to the Harvey Police Department, where he was held in custody for over 48 hours without being notified of the charges against him, processed, or allowed to call his private counsel. He also alleges that two state's attorneys and a detective fabricated evidence, which they presented at his bond hearing.

The district court screened Watkins's first amended complaint, *see* 28 U.S.C. §§ 1915(e)(2), 1915A(a), and allowed him to proceed with his (1) illegal-search-and-arrest claims against Officers Muhammad and Kant and (2) failure-to-intervene claim against Kant. (The City of Harvey was kept on as a necessary party for any possible indemnification of the individual defendants.) The court cautioned Watkins that his claims may be barred by *Younger* abstention, a doctrine that directs federal courts to abstain from hearing federal claims that interfere with pending state criminal proceedings. *Younger*, 401 U.S. at 43–44; *J.B. v. Woodard*, 997 F.3d 714, 722 (7th Cir. 2021). To determine whether his federal claims might interfere with his state criminal case, the court directed Watkins to update the court on the status of his criminal case.

In May 2023, Watkins, whose case remains pending in state court, filed a second amended complaint that named the detective and assistant state's attorneys who allegedly fabricated evidence against him, as well as the City of Harvey and the Harvey Police Department for engaging in a pattern and practice of misconduct. (The district court has yet to screen the second amended complaint, and the additional defendants have not been served.)

On December 8, 2023, the court sua sponte stayed the case under *Younger*. The court explained that Watkins's complaint implicates *Younger* because he can adjudicate his federal claims in his state criminal case. Indeed, the court noted that Watkins's filings showed he was actively litigating his Sixth Amendment claims in state court. Because the defendants' arrest of Watkins initiated the state criminal charges against

him, the court concluded that any litigation in federal court on Watkins's claims could interfere with the ongoing state criminal proceeding.

On December 19, 2023, Watkins filed a "Motion to Show Cause Why the '*Younger* Abstention' Doctrine Do[es] Not Apply." He later filed motions for a temporary restraining order, preliminary injunction, and default judgment.

On April 4, 2024, the court issued an order clarifying that the case was stayed under *Younger*, citing its December 8, 2023, order, and denying all of Watkins's motions. The court noted that since the stay order, the docket had been "a beehive of activity, but it should be in hibernation."

Watkins appealed, challenging the district court's stay order under *Younger*. The defendants counter that we lack jurisdiction over the appeal because the April 4, 2024, order was an interlocutory order, not a final judgment. But the court's ruling is an immediately appealable collateral order. The collateral order doctrine permits appellate review of a small class of interlocutory rulings that do not end the litigation but resolve important questions separate from the merits and are effectively unreviewable on appeal from a final judgment. *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996); *Garrick v. Moody Bible Inst.*, 95 F.4th 1104, 1110 (7th Cir. 2024).

As for the merits, Watkins argues that *Younger* abstention was not appropriate because his claims are distinct from the issues underlying his state prosecution. In his view, the federal court can resolve his claims about his bond hearing without impeding his state criminal case. He grounds this argument in a footnote from *Gerstein v. Pugh*, 420 U.S. 103, 108 n.9 (1975), in which the Supreme Court stated that *Younger* did not apply to plaintiffs who sought to challenge their custody pending their state criminal trials. The Court reasoned that the injunctive relief "was not directed at the state prosecutions as such, but only at the legality of pretrial detention without a judicial hearing," and thus the injunction "could not prejudice the conduct of the trial on the merits." *Id.* Watkins argues that, like the custody challenge in *Gerstein*, his challenge to his bond hearing would not interfere with the state's ability to prosecute him.

The circuits are split over whether the footnote in *Gerstein* creates an exception to *Younger* where plaintiffs claim their constitutional rights were violated in their pretrial state criminal proceedings. Four circuits have concluded that *Younger* is not a barrier to federal court intervention when the plaintiffs' claims do not implicate the merits of their criminal prosecution. *See Fernandez v. Trias Monge*, 586 F.2d 848, 851 (1st Cir. 1978)

(judicial determination of probable cause); *Stewart v. Abraham*, 275 F.3d 220, 225 (3d Cir. 2001) (re-arrest policy); *Betschart v. Oregon*, 103 F.4th 607, 617 (9th Cir. 2024) (counsel for pretrial detention determination); *Walker v. City of Calhoun*, 901 F.3d 1245, 1254 (11th Cir. 2018) (prompt bail hearing). Two circuits disagree. *See Wallace v. Kern*, 520 F.2d 400, 404 (2d Cir. 1975) (prolonged pretrial confinement); *Daves v. Dallas County*, 64 F.4th 616, 631 (5th Cir. 2023) (en banc) (pretrial custody for inability to post bail).

We need not weigh in on this issue because Watkins's claim is factually distinguishable from *Gerstein*. While the plaintiffs in *Gerstein* sought an injunction to compel a judicial hearing on probable cause ("an issue that could not be raised in defense of the criminal prosecution," *Gerstein*, 420 U.S. at 108 n.9), Watkins's claim is entangled with the merits of his criminal case. He argues that his bond hearing was constitutionally inadequate because the defendants presented fabricated evidence. Unlike *Gerstein*, a federal court cannot adjudicate Watkins's claims of fabricated evidence without creating "federal-state friction" because the merits of Watkins's criminal prosecution rely on the same allegedly fabricated evidence. *Simpson v. Rowan*, 73 F.3d 134, 138 (7th Cir. 1995). An injunction based on a claim of fabricated evidence would necessarily "prejudice the conduct of the trial on the merits." *Gerstein*, 420 U.S. at 108 n.9. Watkins is free to litigate his claim of fabricated evidence in the course of his criminal case. *See Gakuba v. O'Brien*, 711 F.3d 751, 753 (7th Cir. 2013) (staying claims that police officers and state prosecutors unlawfully searched and detained plaintiff because those constitutional issues can be litigated during the plaintiff's ongoing criminal case).

Watkins similarly relies on *Gerstein* to argue that the district court should not have abstained from deciding that he was denied his choice of counsel at his bond hearing—another claim that he regards as distinct from the merits of his criminal case and outside the bounds of his state court criminal trial. But Watkins did not name as a defendant anyone who can provide a remedy for this claim. To the extent that Watkins thinks that the state's attorneys were responsible for allowing the bond hearing to go forward without his choice of counsel present, they are not proper defendants because they do not preside over the bond hearing proceedings.

Watkins also argues that his claims fall under *Younger*'s exception for "extraordinary circumstances," which allows federal courts to intervene when there is a great and immediate danger of harm to the plaintiff. *Younger*, 401 U.S. at 45. In his view, his loss of liberty during detention is, itself, irreparable harm and constitutes the kind of extraordinary circumstance that warrants federal court intervention. But *Younger* specifies that the ordinary hardships experienced by criminal defendants do not rise to

the level of irreparable harm. *Id.* at 46. While we do not minimize the loss of liberty, courts routinely order pretrial detention after weighing the risk of non-appearance and the potential risk to public safety. It is a common procedure that, in and of itself, does not rise to the level of irreparable harm.

Lastly, Watkins argues that the district court erred in denying his motion for default judgment because the defendants failed to file an answer to his complaint within the time frame required under Federal Rule of Civil Procedure 12. But the court appropriately denied the motion based on the stay order. "To say that abstention is in order then is to say that federal courts should not address the merits, period." *Greening v. Moran*, 953 F.2d 301, 304 (7th Cir. 1992).

AFFIRMED