

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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**MARQUIS KEMP,**

**Plaintiff**

v.

**DETECTIVE DARREN ALSTON,**

**Defendant.**

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**CIVIL ACTION**

**NO. 01-5552**

**DuBOIS, J.**

**April 16, 2002**

**MEMORANDUM**

Plaintiff, Marquis Kemp, a pre-trial detainee at the Delaware County Prison since his July 2001 arrest, is awaiting trial on numerous criminal charges. Presently before the Court is plaintiff's pro se Amended Complaint (Document No. 6, filed January 7, 2002), which pleads a civil rights cause of action and seeks both injunctive and compensatory relief. For the reasons stated in the following Memorandum, the Court dismisses plaintiff's claim for injunctive relief and stays all further proceedings on plaintiff's claim for compensatory relief until the criminal charges against him are resolved.

**I. BACKGROUND**

The "Amended Complaint" now before the Court is actually the third document filed in this case styled, in some manner, as a "Complaint." The procedural history leading to the filing of the present pleading is as follows:

On November 2, 2001, plaintiff filed an Application to Proceed In Forma Pauperis, attached to which was a document labeled "Amended Complaint," and naming as defendant a Ms. Camille Grant. It is unclear why this first filing was labeled as an "Amended" Complaint.

On November 15, 2001, the Court issued an Order denying, without prejudice, plaintiff's Application to Proceed In Forma Pauperis and notifying plaintiff that he could reinstate his action upon informing the Court within twenty days that he wished to pay the required \$150 filing fee in incremental amounts pursuant to 28 U.S.C. § 1915(b).

On November 26, 2001, plaintiff paid to the Clerk \$7.90, the first installment in his \$150 filing fee. Thereafter, plaintiff filed a second pleading, this one captioned as a "Complaint" and naming as defendant, Detective Darren Alston. On December 10, 2001, the Court dismissed both plaintiff's "Amended Complaint" and "Complaint" for failure to comply with Fed. R. Civ. P. 8(a)(2). The Court granted plaintiff leave to file a Second Amended Complaint.

On January 7, 2002, in response to the Court's December 10, 2001, Order, plaintiff filed another document entitled "Amended Complaint" naming as defendant, Detective Darren Alston. Although plaintiff's Amended Complaint does not specifically mention the civil rights statute, 42 U.S.C. § 1983, plaintiff alleges violations of his civil rights in that pleading. In short, plaintiff alleges that defendant, Detective Alston, was responsible for the "manufacturing of false criminal charges...which led to [the] illegal incarceration of [plaintiff]." Plaintiff's Amended Complaint also refers to a "Defendant Grant," presumably the same Grant who is named as a defendant in plaintiff's original "Amended Complaint" filed on November 2, 2001. Plaintiff alleges that Grant was responsible for falsely identifying plaintiff as having committed the crimes for which he was arrested. The Court will not consider Grant as a defendant, however, because plaintiff did not name her as such in the caption of his most recent Amended Complaint.<sup>1</sup>

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<sup>1</sup> Hereinafter, the Court's references to plaintiff's "Amended Complaint" will be to the document filed on January 7, 2002.

## **II. DISCUSSION**

Plaintiff's Amended Complaint reveals that his criminal case is currently pending in the courts of Pennsylvania, with a trial scheduled for this month. Plaintiff's pending criminal case has a significant impact on each of plaintiff's claims for injunctive and compensatory relief. The Court examines each of plaintiff's requested forms of relief in turn.

### **A. INJUNCTIVE RELIEF**

Plaintiff's claim for injunctive relief is non-specific; he does not specifically state that he seeks an Order enjoining the criminal proceedings currently pending in state court. Moreover, he does not name as a defendant anyone with authority to enjoin the criminal proceedings. Those reasons, without more, are sufficient to warrant denial of any injunctive relief in this case.

Even if plaintiff had requested that the Court enjoin plaintiff's criminal proceedings, such relief would not have been available under the longstanding abstention doctrine of Younger v. Harris, 401 U.S. 37, 43-44 (1971), which dictates that federal courts should decline to enjoin pending state criminal proceedings. See Zahl v. Harper, 282 F.3d 204, 208-09 (3d Cir. 2002) (describing Younger abstention doctrine). There are, of course, exceptions to the Younger rule: "abstention is not appropriate if the plaintiff establishes that 'extraordinary circumstances exist ... such that deference to the state proceeding will present a significant and immediate potential for irreparable harm to the federal interests asserted.'" Id. at 209 (quoting Schall v. Joyce, 885 F.2d 101, 106 (3d Cir. 1989)). Plaintiff, however, alleges no facts in his Amended Complaint that would establish the unavailability of an adequate remedy at law such that plaintiff will be irreparably harmed during the criminal proceedings against him.

For these reasons, the Court dismisses plaintiff's claim for injunctive relief as legally

frivolous under 28 U.S.C. § 1915(e)(2)(B)(i).

## **B. COMPENSATORY RELIEF**

Plaintiff's claim for compensatory relief is grounded on his allegations that he is unconstitutionally incarcerated. As distinct from claims for injunctive relief, a "District Court has no discretion to dismiss rather than to stay claims for monetary relief that cannot be redressed in the state proceeding." Deakins v. Monaghan, 484 U.S. 193, 202 (1988).<sup>2</sup> Thus, because the Court is "required to retain jurisdiction over this portion of the claim," Nernberg v. City of Pittsburgh, 50 F. Supp. 2d 437, 442 (W.D. Pa. 1999) (citing Deakins, 484 U.S. at 203-04), the Court "must stay rather than dismiss accompanying claims for damages when such relief is not available in the ongoing state proceeding." Nelson v. Howard, 810 F. Supp. 161, 164 (E.D. Pa. 1992).

Plaintiff will not be able to pursue his claims for damages during the state court criminal proceedings. See id. ("Damages relief is not available to plaintiff in the context of his criminal prosecution."). Accordingly, the Court will stay all proceedings on plaintiff's claims for monetary damages until the final resolution of plaintiff's criminal case. In so doing, the Court notes that, should the pending criminal proceedings result in plaintiff's conviction, the Court's stay will extend through the plaintiff's exhaustion of available appellate and collateral relief under the rule of Williams v. Hepting, 844 F.2d 138, 144-45 (3d Cir. 1988) (requiring stay of proceedings involving damage claims attacking validity of state-court conviction during

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<sup>2</sup> In Deakins, the Supreme Court approved the Third Circuit's rulings in Crane v. Fauver, 762 F.2d 325 (3d Cir. 1985) and Williams v. Red Bank Bd. of Educ., 662 F.2d 1008 (3d Cir. 1981) that "require[d] a District Court to stay rather than dismiss claims that are not cognizable in the parallel state proceedings." Deakins, 484 U.S. at 202.

pendency of state-court appeal). See also Tedford v. Hepting, 990 F.2d 745, 749-50 (3d Cir. 1993) (describing Williams as adopting “a ‘limited exhaustion requirement’ where the § 1983 action seeks ‘in essence’ to attack the validity of a state court conviction” and extending rule requiring stay of proceedings to cases where state or federal collateral attacks are pending). Additionally, in the event of plaintiff’s conviction, plaintiff should be mindful of Heck v. Humphrey, 512 U.S. 477, 486-87 (1994), in which the Supreme Court held that “42 U.S.C. § 1983 does not provide a cause of action to recover monetary compensation for an allegedly unconstitutional conviction or imprisonment where recovery would necessarily imply the invalidity of an outstanding criminal conviction of a state court.” Smith v. Holtz, 87 F.3d 108, 110 (3d Cir. 1996) (citing and explaining holding of Heck).

### **III. CONCLUSION**

For the reasons set forth above, the Court dismisses plaintiff’s claim for equitable relief and stays his action for compensatory damages. The Court will transfer the case to the Civil Suspense File. Before the case is transferred, however, the Court directs the United States Marshal to proceed with service of the Summons and Amended Complaint filed January 7, 2002, in accordance with the attached Order.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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MARQUIS KEMP,	:	
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Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
DETECTIVE DARREN ALSTON,	:	NO. 01-5552
	:	
Defendant.	:	
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**ORDER**

AND NOW, this 16<sup>th</sup> day of April, 2002, upon consideration of plaintiff's pro se Amended Complaint (Document No. 6, filed January 7, 2002), the Court having previously granted plaintiff in forma pauperis status by Order dated December 10, 2001, for the reasons set forth in the foregoing Memorandum, **IT IS ORDERED** as follows:

1. Plaintiff's claim for equitable relief is **DISMISSED AS LEGALLY FRIVOLOUS** under 28 U.S.C. § 1915(e)(2)(B)(i);
2. The Clerk shall serve upon defendant, Detective Darren Alston, copies of a Summons and the Amended Complaint (Document No. 6), and a waiver of service request pursuant to Fed. R. Civ. P. 4(d);
3. If defendant, Detective Darren Alston, should refuse to waive service, service of the Summons and Amended Complaint (Document No. 6) are to be made upon the defendant by the United States Marshals Service;
4. Upon the completion of service of process, all further proceedings shall be **STAYED**;
5. Upon completion of service of process, the Clerk shall **TRANSFER** this case to the

**CIVIL SUSPENSE FILE** and mark the case **CLOSED FOR STATISTICAL PURPOSES;**  
and,

6. The Court shall **RETAIN** jurisdiction over the case and the case shall be **RETURNED** to the Court's active docket when there are no impediments to further proceedings.

**IT IS FURTHER ORDERED** that plaintiff, Marquis Kemp, shall file and serve brief status reports with respect to his ongoing criminal proceedings at four (4) month intervals, or more frequently if warranted by the circumstances. Copies of plaintiff's status reports shall be served on defendant, Detective Darren Alston, and the Court (Chambers, Room 12613) when the originals are filed.

**BY THE COURT:**

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**JAN E. DUBOIS, J.**