

Not Intended for Print Publication

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

DAVID KIM STANLEY,)	
)	
Plaintiff,)	Case No. 2:04CV00034
)	
v.)	OPINION
)	
PAUL DARRYL SMITH, ET AL.,)	By: James P. Jones
)	Chief United States District Judge
Defendants.)	

David Kim Stanley, Plaintiff Pro Se; Daniel R. Bieger, Copeland & Bieger, P.C., Abingdon, Virginia, for Defendant Paul Darryl Smith; Henry S. Keuling-Stout, Keuling-Stout, P.C., Big Stone Gap, Virginia, for Defendant J. Jack Kennedy, Jr.; and Edward M. Macon, Senior Assistant Attorney General of Virginia, Richmond, Virginia, for Defendant J. Robert Stump.

In this pro se action, the plaintiff seeks injunctive relief involving a criminal prosecution. For the reasons expressed hereafter, I find that this court has no jurisdiction to interfere with the ongoing state proceedings and that alternatively, the plaintiff is not entitled to such relief.

The plaintiff, David Kim Stanley, was convicted in 1989 in Wise County, Virginia, of securities fraud, embezzlement, and obtaining money by false pretenses. In 2001, he was found guilty of violating his probation by the presiding state judge, J. Robert Stump, and ordered to complete 2000 hours of community service. A

private company, Community Based Corrections, Inc., was retained by the state court to oversee Stanley's home electronic monitoring and work release program. While Stanley is no longer on supervised probation, a question has arisen as to whether Stanley has completed the community services hours required as a condition of his continued release on probation. On March 12, 2004, Judge Stump recused himself from further handling of Stanley's case; the other circuit judge in the circuit, Birg E. Sergent, thereafter also recused himself and a retired judge, Nicholas E. Persin, was designated by the Virginia Supreme Court to hear the matter.

Prior to the designation of Judge Persin, Stanley filed the present action in the United States District Court for the Eastern District of Tennessee, seeking injunctive relief against Judge Stump, Paul D. Smith, the president of Community Based Corrections, Inc., and J. Jack Kennedy, Jr., the Clerk of the Circuit Court of Wise County. The court sua sponte transferred the case to this court. Thereafter, the plaintiff filed an Amended Complaint, to which the defendants have responded by moving to dismiss and for summary judgment.¹ The plaintiff was given a *Roseboro*²

¹ In his Amended Complaint, the plaintiff added four new defendants: Community Based Corrections, Inc.; Grace Hensley (a deputy court clerk); and John and Jane Doe. None of these defendants have been served and the only new defendant against whom relief is sought is Hensley. Nevertheless, the principles relied upon in this Opinion apply to all of the defendants.

² *Roseboro v. Garrison*, 528 F.2d 309, 310 (4th Cir. 1975).

notice, and has responded to the motions, which are now ripe for decision.³

The plaintiff complains of numerous injustices allegedly committed against him by Judge Stump and Paul Smith in the course of his probation supervision. He contends that Court Clerk Kennedy, through a subordinate, refused to issue a witness subpoena for Judge Stump at an earlier hearing scheduled before Judge Sergent, and failed to keep the proper documents relating to his case in the official court file. He requests an injunction against the defendants ordering them, among other things, not to threaten him or his family, to restore the proper documents to the court file, and to issue a summons for Judge Stump to testify.

Assuming that there is a competent state tribunal available to consider the federal issues raised, this court is not permitted to issue injunctions that interfere with ongoing state criminal proceedings. *See Younger v. Harris*, 401 U.S. 37, 44-45 ((1971); *see also Gibson v. Berryhill*, 411 U.S. 564, 577 (1973)). This doctrine clearly bars the present action. The plaintiff may raise his federal due process claims in the present proceedings before Judge Persin and thereafter if necessary in the state appellate system.

³ I will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not significantly aid the decisional process.

Moreover, even if this court had jurisdiction to issue the injunctions requested, I would decline to do so because the matters complained of are now moot. Judge Stump is no longer the judge in the case; the plaintiff is no longer on active probation and is not being supervised by Paul Smith or Community Based Corrections, Inc.; and Court Clerk Kennedy has made oath that the court file is fully restored and available for court use. Any question as to the priority of issuing future witness subpoenas may be taken up with the designated state judge.

For these reasons, this action will be dismissed for lack of jurisdiction.

DATED: December 20, 2004

/s/ JAMES P. JONES
Chief United States District Judge