

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

AUG 25 1967

FILED

A. DALLAM O'BRIEN, JR.

NEW ORLEANS DIVISION

CLERK

RICHARD B. SOBOL, ET AL.,

PLAINTIFFS

VS.

LEANDER H. PEREZ, SR., ET AL.,

DEFENDANTS.

CIVIL ACTION

NO. 67-243

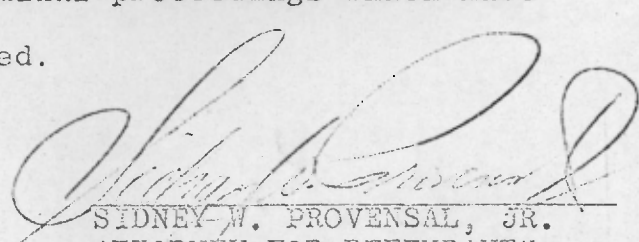
SECTION "E"

* * * * *

MOTION FOR SUMMARY JUDGMENT

Defendants, Leander H. Perez, Sr., Leander H. Perez, Jr. and Eugene E. Leon, by Sidney W. Provensal, Jr., their attorney, hereby move the Court to enter summary judgment for said defendant, and in support of said motion, in accordance with the provisions of Rule 56(b) of the Rules of Civil Procedure, the defendants refer this Court to the affidavit of Allen L. Lobrano attached hereto, the pleadings and exhibits filed herein and the depositions of plaintiffs Richard B. Sobol and all defendants filed herein. Said motion being filed on the following grounds:

1. The Court does not have jurisdiction to grant the equitable relief sought in accordance with Title 28, Section 2283 of the U.S. Code.
2. The Court must abstain from interfering with State Court criminal proceedings which have already commenced.


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MEMORANDUM IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

Petitioners seek an injunction barring the defendants, Leander H. Perez, Sr., Leander H. Perez, Jr. and Judge Eugene E. Leon from prosecuting petitioner, Sobol for violation of La. R.S. 37: 213 and 214. Petitioners seek such an injunction on the basis that the privileges and immunities decured by the U.S. Constitution, Article IV, Section 1, Article VI, Clause 2, Amendment XIV, and 42 USC 1981, etc. prevent the State of Louisiana from constitutionally prohibiting, restraining or punishing petitioner under La. R.S. 37: 213 and 214. The petitioners further allege that these statutes are unconstitutional as applied to plaintiff, Sobol's arrest, and are unconstitutional on their face as being vague and failing to give fair notice and warning of the conduct which they prohibit in controvention of the 14th Amendment.

In support of their motion for summary judgment, it is the contention of the defendants that this Court does not have the jurisdiction to grant the equitable relief sought. Such a contention is based on Title 28, Section 2283 of the U.S. Code, and that statute's basic underlying principle that a Federal Court should not enjoin State Court proceedings where there are adequate remedies available to the defendant in the State Courts.

This generally recognized principle that equitable relief cannot be granted in cases where there are adequate remedies in the State Courts was fully supported by the U.S. Supreme Court

in the landmark case of Douglas v. City of Jenatte, 319 U.S. 158, 87 L.ed 1324 (1942). In that case, the petitioners sought to enjoin the enforcement of a municipal ordinance which required a license to solicit orders for merchandise. Since the plaintiffs were members of a religious group known as Jehovah's witnesses, they claimed that enforcement of the statute would contravene their freedom of speech, press and religion as guaranteed by the First and Fourteenth Amendments. The U.S. Supreme Court, in dismissing the bill held the following:

"Congress, by its legislation, has adopted the policy, with certain well defined exceptions, of leaving generally to the State Courts the trial of criminal cases arising under State laws, subject to review by this Court of any Federal questions involved. Hence, Courts of equity in the exercise of their discretionary powers should conform to this policy by refusing to interfere with or embarrass threatened proceedings in State Courts save in those exceptional cases which call for the interposition of a Court of equity to prevent irreparable injury which is clear and imminent; and equitable remedies infringing this independence of the states - though they might be otherwise given - should be withheld if sought on slight or inconsequential grounds."

Douglas v. City of Jeanette, Supra at 1329

The Court emphasized the fact that even though the pending prosecution was alleged to be in violation of constitutional guarantees, this was not a ground for injunctive relief since

"... the lawfulness or constitutionality of the statute or ordinance on which the prosecution is based may be determined as readily in the criminal cases, as in a suit for injunction." Ibid.

The subsequent history of this ruling has been excellently outlined and presented in the 1963 case of Zellenger v. Lingo 218 F.S. 513, where the Federal District Court dismissed the petitioner's attempt to enjoin State and County officials from prosecuting them for conduct calculated to provoke a breach of the peace, which conduct resulted from their attempted freedom march through Alabama. The Court was careful to point out that it was not necessarily approving the actions brought by the State officials, but only that the proper remedy sought by the petitioners was through the State Court system with an ultimate appeal to the U.S. Supreme Court, and not by collateral actions in a Federal District Court.

In the more recent case of Wells v. Hand, 238 F.Supp. 779 (1965), the plaintiffs sought an injunction against Georgia officials to prevent them from prosecuting plaintiffs under a Georgia statute prohibiting inciting a riot. Their claim was based on the unconstitutionality of the Georgia statute and that defendants entered into an "overt scheme or plan" to deprive plaintiffs of their constitutional rights and privileges. In dismissing the plaintiffs petition, the Court pointed out that the alleged invalidity of a State law is not of itself grounds for equitable relief in Federal Court, but that a showing of great and irreparable harm is necessary. The Court said, "The mere fact that the plaintiffs may be convicted in the State Court does not create such extraordinary circumstances as would justify an injunction..." Wells v. Hand, Supra at 786. This decision was affirmed in a per curiam decision by the U.S. Supreme Court. 382 U.S. 39, 16 L.ed 2d 32 (1965). Numerous other cases have also cited Douglas v. City of Jeanette to support the Court's decision of refusing an injunction. See Outdoor American Corp. v. City of Philadelphia 33 F.2d 963 (1964); Moss v. Hornig, 314 F.2d 89 (1963).

As further support of their contention, the defendants call the Court's attention to 28 U.S.C. 2283 which provides:

"A Court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction; or to protect or effectuate its judgments."

This statute is an express declaration by Congress of the principles that a State Court proceedings should not be interfered with once those proceedings have begun. This statute has been used as further support to deny injunctive relief from State Court prosecutions. Kelly v. George C. Wallace, 257 F.Supp. 343 (1966). It has been argued quite frequently that 42 U.S.C. 1981, etc. of the Civil Right's Act was intended to be an express authorization by Congress allowing injunctive relief. However this argument has not been successful. In Chaffee v. Johnson, 229 F.Supp. 445 (1964), it was alleged that the defendants entered into a

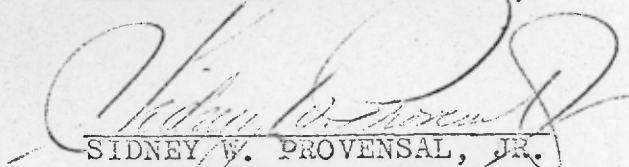
conspiracy to have the plaintiff indicted and prosecuted for perjury for the sole purpose of intimidating and discouraging the plaintiff and others from engaging in civil rights activities. The Court expressly held that such an injunction was prohibited by 28 U.S.C. 2283 and that the Civil Rights Act does not modify or suspend that section. In the case of Baines v. City of Danville, 337 F.2d 579 (1964), cert. denied 381 U.S. 939, the petitioners sought injunctive relief from State Court prosecution for their violation of a State Court temporary injunction. The Court of Appeals for the Fourth Circuit was faced with the direct question of whether 42 U.S.C. 1983 created a Congressional exception to 28 U.S.C. 2283. In refusing to grant the injunction, the Court held that there was no such exception created. In support of its decision, the Court of Appeals said,

"Our construction is strongly supported by the Supreme Court's consistent support of the principle of Section 2283 in Civil Rights cases. In every case before the Supreme Court in which Federal interference with State Court proceedings has been premised upon asserted denials of Civil rights, the Supreme Court has required or sanctioned forbearance. It has usually done so on the basis of considerations of equity and comity fashioned by it, but which are identical with those which underlie the statute." Baines v. City of Danville, Supra at 591. Citing Douglas v. City of Jeanette, 319 U.S. 157, 87 L.ed. 1324; Stefanelli v. Minard, 342 U.S. 117, 96 L.ed. 138; Cleary v. Bolger, 371 U.S. 392, L.ed.2d 390.

The petitioners in the case at bar have attempted to show the necessity for injunctive relief by alleging that Negroes in Plaquemines Parish have been denied the right to adequate legal counsel in the past, and that a subsequent conviction of petitioner, Sobol will in effect deny them that right under color of law. However, the evidence submitted by the defendants has shown that these allegations are untrue, that the Negroes of Plaquemines Parish have been afforded counsel in the past from Orleans and St. Bernard, as well as Plaquemines, and that the possible conviction of petitioner, Sobol will not result in any denial of their right to obtain counsel in the future. The evidence submitted by defendants

also shows that the bill of information against petitioner, Sobol was filed and recorded in the minutes of the Twenty-Fifth Judicial District Court before these injunctive proceedings were sought. Such action, therefore, is expressly prohibited by 28 U.S.C. 2283 since proceedings have already begun in the State Court.

RESPECTFULLY SUBMITTED,



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