

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 16 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

AURELIUS AUGUSTINUS KENNETH
PEYTON, AKA Aurelius Augustinus
Kenn Peyton, AKA Ellis,

Plaintiff - Appellant,

v.

JEFFREY BURDICK, Detective; et al.,

Defendants - Appellees.

No. 08-16241

D.C. No. 1:07-cv-00453-LJO-
TAG

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, District Judge, Presiding

Submitted November 17, 2009**

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Aurelius Augustinus Kenneth Peyton, a pre-trial detainee, appeals pro se

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging manipulation of evidence, perjury, and false arrest. We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand.

Because Peyton's claims implicate rulings that are likely to be made in the pending state court criminal proceeding, *see Heck v. Humphrey*, 512 U.S. 477, 486-90 (1994), the district court should have stayed the section 1983 action "until the criminal case . . . is ended," *Wallace v. Kato*, 549 U.S. 384, 393-94 (2007). Therefore we vacate the judgment and remand for the district court to stay the action until the criminal proceedings are concluded.

Appellees' motion to strike the reply brief in its entirety is granted and their motion to strike portions of the reply brief is denied as moot.

Appellees' shall bear appellant's costs on appeal.

VACATED and REMANDED.