

IN THE FIFTH DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

NEIL JOSEPH GILLESPIE,  
Appellant,  
v.

CASE NO. 5D23-2005  
LT CASE NOS. 2022-CF-1143  
2019-CF-4193  
2021-CF-0286

STATE OF FLORIDA,  
Appellee.

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AMENDED NOTICE TO ATTORNEY GENERAL  
RULE 9.900 (m) Notice of Constitutional Question

NOTICE IS GIVEN of compliance with the Florida Rules of Appellate Procedure 9.425, with respect to a constitutional challenge brought pursuant to section 934.03 of the Florida Statutes, *Interception of wire, oral, or electronic communications prohibited*. This Notice is amended to include the Appellant's affidavit regarding a jail Emessage received from his appointed counsel regarding the Constitutional Challenge.

The undersigned complied by serving Ashley Moody, Attorney General for the State of Florida, and William Gladson, State Attorney for the Fifth Judicial Circuit, with a waiver of service summons and complaint challenging the constitutionality of section 934.03 of the Florida Statutes, *Interception of wire, oral, or electronic communications prohibited*, United States District Court, Middle District of Florida, Ocala Division, Neil Joseph Gillespie v. State of Florida, case no. 5:21-CV-00416-PGB-PRL.

AMENDED NOTICE TO ATTORNEY GENERAL  
RULE 9.900 (m) Notice of Constitutional Question

A Return of Service for Ashley Moody, Attorney General, is attached, and shows service November 5, 2021 @10:24 AM at 107 W Gaines Street, Tallahassee, FL 32399 by James Kady for ABC Legal.

A Return of Service for William Gladson, State Attorney for the Fifth Judicial Circuit, is attached, and shows service November 5, 2021 @8:17 AM at Marion County Judicial Center, 110 NW 1st Ave Ste 5000 Ocala, FL 34475-6614, by Kenneth Kelley for ABC Legal.

On April 4, 2022, United States District Judge Paul G. Byron entered the attached Order of Dismissal (DOC 23) without prejudice under the *Younger v. Harris* abstention doctrine, 401 U.S. 37 (1971), on the premise that ordinarily a pending state prosecution provides the accused a fair and sufficient opportunity for vindication of federal constitutional rights.” *Hughes v. Att’y Gen. of Fla.*, 377 F.3d 1258, 1264 n. 7 (11th Cir. 2004).

This Notice is amended with the attached affidavit of Neil J. Gillespie, the Appellant, regarding a jail Emessage received from his appointed counsel, Doyle Gary Lashley, Jr., that states in relevant part:

1. I am over the age of eighteen and competent to testify as to the facts and matters set forth below. I make this affidavit upon personal knowledge unless otherwise expressly stated.
2. On July 30, 2021, I was an incarcerated Defendant in the Marion County Jail since May 10, 2021 in three Marion County Florida criminal cases: 2019-CF-4193, 2020-CF-2417, and 2021-CF-286;

AMENDED NOTICE TO ATTORNEY GENERAL  
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case 2020-CF-2417 was later *nolle prosequi* by the prosecutor on April 28, 2022.

3. Case 2019-CF-4193 and case 2021-CF-286 each alleged I violated Florida Statute 934.03, Interception and disclosure of wire, oral, or electronic communications prohibited.

4. On July 30, 2021, Circuit Judge Peter Brigham failed to inform me that he appointed on that day attorney Doyle Gary Lashley, Jr., FL Bar ID 86786, to represent me.

5. On August 11, 2021, while incarcerated, I filed a *pro se* Complaint in federal court for a Constitutional Challenge to Florida Statute 934.03, Interception and disclosure of wire, oral, or electronic communications prohibited: Neil Joseph Gillespie v. State of Florida, U.S. District Court, Middle District of Florida, Ocala Division, case no. 5:21-cv-00416-PGB-PRL.

6. On August 23, 2021 I learned that Judge Brigham had appointed Mr. Lashley to represent me. I called Mr. Lashley later that day from jail but he refused to take my phone call.

7. On August 24, 2021 I sent Mr. Lashley an Emessage from jail asking him in part to “see case 5:21-cv-00416, U.S. District Court, Middle District of Florida, Ocala Division”.

8. On September 1, 2021 Mr. Lashley responded to me in jail with an Emessage Case Update that stated: “5:21-cv-00416 is not relevant to your criminal cases”. A paper copy of Mr. Lashley’s Emessage to me, as provided to me by the jail, is attached to this affidavit.

FURTHER AFFIANT SAYETH NOT.

The Appellant asserts that case 5:21-cv-00416, U.S. District Court, Middle District of Florida, Ocala Division, is relevant to his criminal cases, and contends the failure of Mr. Lashley to acknowledge that fact, or assist the Appellant with his defense thereto, is evidence of ineffective assistance

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RULE 9.900 (m) Notice of Constitutional Question

of counsel, and evidence of a denial of the Appellant's right to effective counsel under the Sixth Amendment of the U.S. Constitution.

As of today the pending state prosecution in 2019-CF-4193 and 2021-CF-286 has not provided the accused a fair and sufficient opportunity for vindication of his federal constitutional rights, contrary to the holding in the Order (DOC 23) of United States District Judge Paul G. Byron.

RESPECTFULLY SUBMITTED September 27, 2023.



NEIL JOSEPH GILLESPIE  
2801 SW College Road, Ste 3  
Ocala, FL 34474  
Tel: 352-239-9037  
Email: celticein@yahoo.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY I furnished the foregoing on September 27, 2023 to the names below on the Florida Portal.

Office of the Attorney General  
444 Seabreeze Blvd.  
5th Floor  
Daytona Beach, FL 32118  
CrimAppDAB@MyFloridaLegal.com

Marion County Clerk  
Marion County Courthouse  
P.O. Box 1030  
Ocala, FL 34478-1030  
Appeals@marioncountyclerk.org



Neil Joseph Gillespie

<b>RETURN OF SERVICE</b>		Court Stamp Here
Court	<b>MIDDLE DISTRICT OF FLORIDA OCALA DIVISION</b>	
Plaintiff	<b>NEIL JOSEPH GILLESPIE</b>	Case # <b>5:21-CV-00416-PGB-PRL</b>
Defendant	<b>STATE OF FLORIDA</b>	
Person to be Served	<b>Ashley Moody, Florida State Attorney</b>	Came to Hand Date/Time <b>11/05/2021 10:18 AM</b>
Manner of Service	<b>Substitute</b>	Service Date/Time <b>11/05/2021 10:24 AM</b>
Documents	<b>SUMMONS;COMPLAINT</b>	
		Service Fee <b>\$75.00</b>

On **11/05/2021** at:  
**107 W Gaines Street, Tallahassee, FL 32399** I served **Ashley Moody, Florida State Attorney** by:

Personally leaving **1** copy(ies) of **SUMMONS and COMPLAINT** at his/her usual place of abode with **Regia Mompeller** , who is 15 years of age or older, a person residing therein of who confirmed the Defendant resides at the above address and informed that person of the contents thereof, with the date and hour of service endorsed thereon by me.

THE DESCRIPTION OF THE PERSON WITH WHOM THE COPY OF THIS PROCESS WAS LEFT IS AS FOLLOWS:  
**I delivered the documents to Regia Mompeller who indicated they were the agency clerk, co-resident with identity confirmed by subject stating their name. The individual accepted service with direct delivery. The individual appeared to be a black-haired white female contact 45-55 years of age, 5'6"-5'8" tall and weighing 140-160 lbs with glasses**

Notary not required pursuant to F.S. 92.525(2).

I am over 18 years of age, not a party to nor interested in this case and I have the proper authority in the jurisdiction where I effected service, pursuant to Florida Statute Chapter 48. Per U.S. Code § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



James Kady

**065 / 065 / 065 / 065 /  
065 / 065**

Process Server ID

11/05/2021

Date Executed

Ref REF-9086366



Neil Gillespie  
 <celticein@yahoo.com>

Tracking # 0078851100



<b>RETURN OF SERVICE</b>		Court Stamp Here
Court	<b>MIDDLE DISTRICT OF FLORIDA OCALA DIVISION</b>	
Plaintiff	<b>NEIL JOSEPH GILLESPIE</b>	Case # <b>5:21-CV-00416-PGB-PRL</b>
Defendant	<b>STATE OF FLORIDA</b>	
Person to be Served	<b>William McDonald Gladson, 5th Judicial District State Attorney</b>	Came to Hand Date/Time <b>11/04/2021 1:56 PM</b>
Manner of Service	<b>Substitute</b>	Service Date/Time <b>11/05/2021 8:17 AM</b>
Documents	<b>COMPLAINT;NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS</b>	Service Fee <b>\$75.00</b>

On **11/05/2021** at:  
**Marion County Judicial Center, 110 NW 1st Ave Ste 5000 Ocala, FL 34475-6614** I served **William McDonald Gladson, 5th Judicial District State Attorney** by:

Personally leaving **1** copy(ies) of **COMPLAINT and NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS** at his/her usual place of abode with **KATHY DELTORO, ADMINISTRATIVE ASSISTANT**, who is 15 years of age or older, a person residing therein of who confirmed the Defendant resides at the above address and informed that person of the contents thereof, with the date and hour of service endorsed thereon by me.

THE DESCRIPTION OF THE PERSON WITH WHOM THE COPY OF THIS PROCESS WAS LEFT IS AS FOLLOWS:  
**I delivered the documents to KATHY DELTORO, ADMINISTRATIVE ASSISTANT who indicated they were the authorized employee with identity confirmed by subject stating their name. The individual accepted service with direct delivery. The individual appeared to be a brown-haired white female contact 45-55 years of age, 5'4"-5'6" tall and weighing 140-160 lbs with glasses**

Notary not required pursuant to F.S. 92.525(2).

I am over 18 years of age, not a party to nor interested in this case and I have the proper authority in the jurisdiction where I effected service, pursuant to Florida Statute Chapter 48. Per U.S. Code § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

  
 Kenneth Kelley

**03-4-14**  
 Process Server ID

**11/08/2021**  
 Date Executed

Ref REF-9086366



Neil Gillespie  
 <celticein@yahoo.com>

Tracking # 0078957598



UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

NEIL JOSEPH GILLESPIE,

Plaintiff,

v.

Case No. 5:21-cv-416-PGB-PRL

STATE OF FLORIDA,

Defendant.

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**ORDER OF DISMISSAL**

Plaintiff, a pre-trial detainee at the Marion County Jail proceeding *pro se*, initiated this action by filing a civil rights complaint. (Doc. 1.) Plaintiff complains that the statute under which he is charged is unconstitutional. (*Id.*)

The case is currently before the Court for screening pursuant to the Prison Litigation Reform Act (PLRA). The PLRA requires the Court to dismiss a case if the Court determines that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. See 28 U.S.C. § 1915A. The Court must liberally construe a *pro se* Plaintiff's allegations. See *Haines v. Kerner*, 404 U.S. 519 (1972); see also *Miller v. Stanmore*, 636 F. 2d 986, 988 (5th Cir. 1981).

This Court must abstain from passing on Plaintiff's claims pursuant to the *Younger v. Harris* abstention doctrine. 401 U.S. 37 (1971). "Under *Younger v. Harris* and its

progeny, federal district courts must refrain from enjoining pending state court proceedings except under special circumstances.” *Old Republic Union Ins. Co. v. Tillis Trucking Co., Inc.*, 124 F.3d 1258, 1261 (11th Cir. 1997). “The policy of equitable restraint expressed in [*Younger*] . . . is founded on the premise that ordinarily a pending state prosecution provides the accused a fair and sufficient opportunity for vindication of federal constitutional rights.” *Hughes v. Att’y Gen. of Fla.*, 377 F.3d 1258, 1264 n. 7 (11th Cir. 2004).

The exceptions to *Younger* are very narrow and apply only if there is evidence of state proceedings motivated by bad faith, irreparable injury would occur, or there is no adequate alternative state forum where the plaintiff’s constitutional issues can be raised. *Hughes v. Att’y Gen. of Fla.*, 377 F.3d 1258, 1263 (11th Cir. 2004). In his most recent filing, received by the Court on March 10, 2022, Plaintiff has communicated that his state criminal case is ongoing. (Doc. 22.) None of the *Younger* exceptions apply in the present case.

For the reasons stated herein, the complaint (Doc. 1) is **DISMISSED without prejudice**. The Clerk is directed to enter judgment accordingly, terminate any pending motions, and close the file.

**IT IS SO ORDERED.**

**DONE AND ORDERED** in Ocala, Florida, on April 4, 2022.



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PAUL G. BYRON  
UNITED STATES DISTRICT JUDGE

Copies furnished to:  
Counsel of Record  
Unrepresented Parties  
SA: OCAP-2

AFFIDAVIT OF NEIL J. GILLESPIE  
Emessage of Doyle Gary Lashley, Jr., Esq.

STATE OF FLORIDA        )  
  ) SS.:  
COUNTY OF MARION     )

BEFORE ME, this day personally appeared NEIL J. GILLESPIE, who upon oath deposes upon personal knowledge and states:

1. I am over the age of eighteen and competent to testify as to the facts and matters set forth below. I make this affidavit upon personal knowledge unless otherwise expressly stated.
2. On July 30, 2021, I was an incarcerated Defendant in the Marion County Jail since May 10, 2021 in three Marion County Florida criminal cases: 2019-CF-4193, 2020-CF-2417, and 2021-CF-286; case 2020-CF-2417 was later *nolle prosequi* by the prosecutor on April 28, 2022.
3. Case 2019-CF-4193 and case 2021-CF-286 each alleged I violated Florida Statute 934.03, Interception and disclosure of wire, oral, or electronic communications prohibited.
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5. On August 11, 2021, while incarcerated, I filed a *pro se* Complaint in federal court for a Constitutional Challenge to Florida Statute 934.03, Interception and disclosure of wire, oral, or electronic communications prohibited: Neil Joseph Gillespie v. State of Florida, U.S. District Court, Middle District of Florida, Ocala Division, case no. 5:21-cv-00416-PGB-PRL.
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AFFIDAVIT OF NEIL J. GILLESPIE  
Emessage of Doyle Gary Lashley, Jr., Esq.

8. On September 1, 2021 Mr. Lashley responded to me in jail with an Emessage Case Update that stated: "5:21-cv-00416 is not relevant to your criminal cases". A paper copy of Mr. Lashley's Emessage to me, as provided to me by the jail, is attached to this affidavit.  
FURTHER AFFIANT SAYETH NOT.

  
NEIL J. GILLESPIE

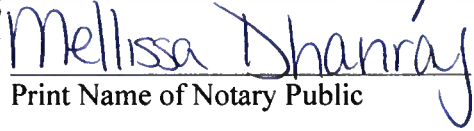
The foregoing instrument was acknowledged before me, this 15<sup>th</sup> day of September, 2023, by Neil J. Gillespie, who is personally known to me, or who has produced drivers license as identification and states that he is the person who made this affidavit and that its contents are truthful to the best of his knowledge.

SEAL





NOTARY PUBLIC

  
Print Name of Notary Public

My Commission Expires: May 22, 2027

NEIL GILLESPIE 0255941 19087 MED;B;114B; ID:16104331 [P 1/1]

**You have received a *JPAY* letter, the fastest way to get mail**

From : DOYLE LASHLEY, CustomerID: 13303279  
To : NEIL GILLESPIE, ID: 0255941  
Date : 9/1/2021 2:13:46 AM EST, Letter ID: 16104331  
Location : 19087  
Housing : MED;B;114B;  
**pre-paid stamp included**

Case Update

5:21-cv-00416 is not relevant to your criminal cases