

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

JAMES FOUR DEER WALKING ROBINSON : CIVIL ACTION
 :
v. :
 :
MARTIN HORN,et al. : NO. 97-3657

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL JUDGMENT**

HUTTON, J.

August 7 , 2000

Presently before the Court are Defendants Corrections Officials' ("Defendants") Motion for Summary Judgment (Docket No. 121), pro se Plaintiff James Four Deer Walking Robinson's ("Plaintiff") response thereto (Docket No. 122), Defendants' Reply Brief (Docket No. 125), Plaintiff's Response Motion in Opposition to Defendants' Reply Brief (Docket No. 130), Defendants' Post-Oral Argument Supplement to Motion for Summary Judgment (Docket No. 134), and Plaintiff's Supplemental Statements and Averments Continued from Hearing of 5/18/2000 (Docket No. 135). The Court held a hearing on May 18, 2000. The Court now enters the following findings of fact and conclusions of law. See Federal Rule of Civil Procedure 52(a).

I. FINDINGS OF FACT

1. Plaintiff, who is currently an inmate at SCI-Graterford, and James Hunt Warcloud ("Warcloud"), a former inmate at SCI-

Graterford,¹ filed suit against Defendants on or about May 27, 1997.

2. Each Defendant is an official of the Pennsylvania Department of Corrections ("DOC").

3. As Warcloud is no longer a party to this lawsuit,² and a number of Plaintiff and Warcloud's claims were previously dismissed, only Plaintiff's First Amendment free exercise claims and Fourteenth Amendment equal protection claims remain for adjudication.

4. Plaintiff's claims relate to the exercise of his religion, Native American Spirituality.

5. Plaintiff is one-sixteenth Cherokee, (see Trans. at 5), and converted from Christianity to Native American Spirituality while incarcerated.

6. Plaintiff is a member of the American Cherokee Confederacy. (See Trans. at 6).

7. At SCI-Graterford, group prayer and group activities are available to those inmates who practice Native American Spirituality. (See Defs.' Mot. for Summ. J., Declaration of Rev. E. Neiderhiser at 2-3). Defendant Reverend Neiderhiser coordinates the religious activities for all accommodated religious activities at SCI-Graterford, including the recruitment and oversight of a

¹ Warcloud is no longer an inmate in the Pennsylvania correctional system.

² As the DOC released Warcloud, the Court thereafter granted Defendants' Motion to Dismiss Warcloud's claims.

volunteer to lead Native American group worship. (See Defs.' Mot. for Summ. J., Declaration of Rev. E. Neiderhiser at 2-3).

8. Prior to the Court's hearing of May 18, 2000, Plaintiff attended only two group prayer sessions and attempted to attend a third session which was cancelled due to the Native American volunteer's unavailability. (See Trans. at 52).

9. The Native American volunteer at SCI-Graterford leads weekly one and one-half hour prayer and education sessions. (See Trans. at 21-22). He brings to the sessions tapes, literature, photographs, a ceremonial pipe, a red pipe stone, etc. (See Trans. at 52-53). At SCI-Graterford, there is also a chest which holds sacred herbs, tobacco, a smudging shell, feathers, burning rights, and other items used in group worship. (See Trans. at 52-53).

10. Plaintiff claims that his rights are being violated because he is denied "[r]easonable access to his religious culture, spirituality, and to practice same respectively." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 2) (hereinafter, "Claim I").

11. Plaintiff claims that his rights are being violated because he is denied "[r]easonable access to make traditional prayer with the required herbs, and to burn for same accordingly, privately, and/or within a group setting." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 2) (hereinafter, "Claim II").

12. Plaintiff wishes to burn herbs in his cell so that he may "smudge" in accordance with his religious beliefs. Among Native Americans, smudging is a universally-accepted means of cleansing religious objects and sending prayer to the creator. (See Trans. at 7, 28, & 30). It is the act of burning herbs in a "smudge pot" (i.e., a shell or a piece of bark), allowing the burning herbs flame to smother, and using the resultant smoke to cleanse objects or send prayer. (See Trans. at 7).

13. Plaintiff is allowed to smudge during group prayer sessions. (See Trans. at 51-52). Prison regulations indirectly prohibit Plaintiff smudging in his cell. (See Trans. at 6-7 & 51-52).

14. Plaintiff claims that his rights are being violated because he is denied "[r]easonable access to perform spiritual ceremonies, smudging, and including and adhering to cyclic religious feasts." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 2) (hereinafter, "Claim III").

15. SCI-Graterford regulations permit practitioners of Native American Spirituality to hold religious feasts. (See Trans. at 64). The Native American Spirituality practitioners at SCI-Graterford elected to not observe this year's Green Corn Ceremony. (See Trans. at 64). When the practitioners of Native American Spirituality elected to not observe this year's Green Corn Ceremony, Plaintiff was not participating in the group prayer and

education sessions and therefore had no input regarding observance of this feast. (See Trans. at 64).

16. Plaintiff claims that his rights are being violated because he is denied

[r]easonable access to and the possession of religious sacred spiritual objects/items, materials (including cassette tapes, visual tapes/VCR/VHS; craftwork), and various accouterments which are needed for prayer, and ceremonies for which to practice their belief in their tribal traditions; individually and as a group; throughout SCI[-Graterford] including the Restricted Housing Unit (RHU) and visiting room.

(Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 3) (hereinafter, "Claim IV").

17. Religious items such as those described above are available to Plaintiff when he elects to participate in Native American Spirituality group prayer and education sessions. (See Trans. at 52-53). Other items (i.e., books and tapes on his religion) are available to him individually. (See Defs.' Post-Oral Arg. Supp. to their Mot. for Summ. J. at 4-5).

18. Plaintiff claims that his rights are being violated because he is denied "[r]easonable inspections and/or searches (visually) upon sacred spiritual objects/items, accouterments, in a traditional manner by not touching, disturbing, and/or handling same in a respectful manner." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 3) (hereinafter, "Claim V").

19. Plaintiff does not claim that his "sacred spiritual objects/items, [and] accouterments" have been anything other than

visually inspected. (See Trans. at 29, 54, & 69).

20. Plaintiff claims that his rights are being violated because he is denied "[t]he traditional custom of 'gifting' and/or giving sacred spiritual objects/items, accouterments to others out of respect amongst Native Americans of such spiritual practice." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 3) (hereinafter, "Claim VI").

21. While the prisoners of SCI-Graterford are not allowed to give gifts to each other, Plaintiff may gift with non-prisoners. (See Trans. at 71).

22. Plaintiff claims that his rights are being violated because he is denied "[r]easonable access to a spiritual sweat lodge." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 3) (hereinafter, "Claim VII").

23. The record indicates that use of a sweat lodge is not a "spiritual" activity of the Cherokee people. (See Trans. at 15)

24. Plaintiff claims that his rights are being violated because he is denied "[a] designated room for Native American use only, as is provided to others within SCI[-Graterford], and per DOC policy." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 3) (hereinafter, "Claim VIII").

25. No religious group at SCI-Graterford has its own exclusive worship space. (See Trans. at 53).

26. Plaintiff claims that his rights are being violated because he is denied

[r]easonable access to Medicine and/or Spiritual person(s), Shaman, which are needed for deaths, and/or other tragedies, to spiritually console the Native Americans whom encounter lost love ones, family crises, etc., other than an Outside volunteer Coordinator and/or non-native Chaplain.

(Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 3) (hereinafter, "Claim IX").

27. Plaintiff never specifically claims that he was denied reasonable access to "Medicine and/or Spiritual person(s), Shaman." Per SCI-Graterford policy, Plaintiff has access to an outside spiritual advisor other than an Outside Volunteer Coordinator or non-native Chaplain. (See Trans. at 55).

28. Plaintiff claims that his rights are being violated because he is denied "[t]he respect, knowledge, and self determination of inmate Councilman and their abilities/credibility within their respective positions whom have proven worthy to oversee and act rightly according to their traditional tribal societies and cultural belief." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 3) (hereinafter, "Claim X").

29. Prisoners are not allowed to exclude other prisoners from group worship activities, are not allowed to have the clergyperson of their choice, and are disallowed from determining whom shall be the volunteer allowed to lead group worship and education activities. (See Trans. at 72-76).

30. Plaintiff claims that his rights are being violated because Defendants failed "[t]o establish an appropriate Religious Activities Policy to fulfill the Spiritual needs of the Native Americans and/or Practitioner of same throughout the DOC." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 3) (hereinafter, "Claim XI").

31. The record contains numerous SCI-Graterford and/or DOC policies regarding Native American religious issues. (See, e.g., Defs.' Mot. for Summ. J., "Numbered Exhibits").

32. Plaintiff claims that his rights are being violated because Defendants failed "[t]o advise and/or train Correctional Officers and/or personnel as to Native American religious policies and/or adequate training on how to handle a Native American issue(s), i.e. the searching of sacred spiritual object, and the like." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 3) (hereinafter, "Claim XII").

33. Guards at SCI-Graterford are advised as to the proper protocol regarding Native American spiritual objects--that is, guards may only visually inspect the religious items of practitioners of Native American Spirituality. (See Trans. at 69).

Moreover, SCI-Graterford and/or the DOC have policies regarding myriad issues concerning Native Americans. (See, e.g., Defs.' Mot for Summ. J., "Numbered Exhibits").

34. Plaintiff claims that his rights are being violated because the Defendants failed "[t]o provide equal training, programs, and rehabilitative services to Native Americans as is provided to other races and/or religions throughout the DOC." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 3) (hereinafter, "Claim XIII").

35. At SCI-Graterford, there are no therapeutic rehabilitative programs specific to a single religion. (See Trans. at 55). Although traditional twelve-step programs require a belief in a higher power, non-religious alternatives also exist within the DOC. (See Defs.' Post-Oral Argument Supp. to their Mot. for Summ. J. at 3).

36. Plaintiff claims that his rights are being violated because he is denied "[r]easonable access to non-sacred spiritual objects/items within the SCI[-Graterford] commissary as is provided to other races and or religions throughout the DOC." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 3-4) (hereinafter, "Claim XIV").

37. Plaintiff is unaware whether there exists a manufacturer or manufacturers from whom the commissary may purchase said items for resale to those incarcerated at SCI-Graterford.

38. Plaintiff claims that his rights are being violated because Defendants failed

[t]o provide federally recognized tribal Medicine and/or Spiritual persons who may best guide the defendants

accordingly to tribal, religious, and cultural traditions and to establish a Native American Board and/or Review Committee to oversee all Native American activities throughout the DOC, other than non-native persons whom are not knowledgeable of same.

(Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 4)

(hereinafter, "Claim XV"). Plaintiff continues that

[t]he above includes the RHU Native American and/or Practitioners on Disciplinary status (DC) or Administrative Custody (AC) accordingly, and with exceptions . . . , which said person(s) would be limited but not denied to possess certain sacred objects, i.e. medicine bag, head band, and possibly other items that such person(s) must have access to in order for his/her continued religious practice; plus said person(s) would not have a need nor is it provided to others

(Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 4).

39. Plaintiff does not claim that he was denied access to tribal medicine or spiritual persons. While in the RHU, Plaintiff never availed himself to an outside spiritual advisor. (See Trans. at 55).

40. Plaintiff claims that his rights are being violated because Defendants "[h]ave repeatedly abused the 'Hair Length Exemption['] Policy." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 4) (hereinafter, "Claim XVI").

41. Plaintiff does not claim that the Hair Length Exemption policy has been violated as to him. (See Trans. at 83; see also Defs.' Mot. for Summ. J., "Numbered Exhibits" at D-6 & D-32 (policy re: Haircut Exemptions)).

42. Plaintiff claims that his rights are being violated

because Defendants failed "[t]o approve and/or address said Native American Proposal[,] Exhibit 'P-11'." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 4) (hereinafter, "Claim XVII").

43. Plaintiff claims that his rights are being violated because Defendants have not provided "[r]easonable access to a small controlled outdoor fire which required for various Native American ceremonies." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 4) (hereinafter, "Claim XVIII").

44. Plaintiff claims that his rights are being violated because Defendants have failed "[t]o allocate and/or provide received funds for Native American Spiritual/Religious purposes, programs, activities, etc." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 4) (hereinafter, "Claim XIX").

45. Plaintiff claims that his rights are being violated because Defendants have failed "[t]o permit Native American religious groups to raise funds for their spiritual operating needs." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 4) (hereinafter, "Claim XX").

46. No religious groups at SCI-Graterford are allowed to raise their own funds. (See Trans. at 77-78).

47. Plaintiff claims that his rights are being violated because Defendants have failed "[t]o provide proper recognition of the Native American as a race, not based on the color of an

individuals skin color alone." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 4) (hereinafter, "Claim XXI").

48. Plaintiff claims that his rights are being violated because Defendants have failed

[t]o post current and/or standard DOC and/or individual SCI[-Graterford] (DC-ADM's), approved policies, directives, bulletins, and procedures governing Native American issues, and making questioned Native American individual prove and/or produce on the spot identification as to his/her belief and/or to what is being challenged by a Correctional Officer; if same is not proved and/or produced then said person may be sanctioned, and falsely accused and disciplined, contrary as to said rules, arbitrarily and without affording any procedural due process of law. All because said rules were not posted in designated areas of the institution and/or not made known to Correctional Officers and/or staff personnel.

(Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 4-5) (hereinafter, "Claim XXII").

49. Plaintiff claims that his rights are being violated because Defendants have failed "[t]o provide Native American meals on their religious observances and on special days in which is provided to non-native religious within SCI[-Graterford] and throughout the DOC." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 5) (hereinafter, "Claim XXIII").

50. Plaintiff claims that his rights are being violated because Defendants have failed to "[p]rovide reasonable access to their religious culture, spirituality, and to practice same respectively, without an Outside Volunteer Coordinator, and/or the like." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 5) (hereinafter, "Claim XXIV").

51. Plaintiff claims that his rights are being violated because Defendants have failed to make "[u]se of birth or institutional committed name with genuine religious name when such name is made known and acknowledged by Institutional officials." (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 5) (hereinafter, "Claim XXV").

52. Plaintiff has the following available to him as part of the group of Native American Spirituality practitioners: (1) ecumenical worship and education for various Native American tribal beliefs including group use of sacred objects such as feathers, pipes and other ritual items that the Native American volunteer provides for the weekly worship circle, smudging via the burning of sacred herbs and other burning rites, and access to educational materials (e.g., tapes, literature, photos); (2) a chest to hold the objects left for group use at SCI-Graterford; (3) special meals and rituals; (4) a meeting area; (5) purification; and (6) the opportunity to seek personal spiritual advice from the Native American volunteer. (See Defs.' Post-Oral Arg. Supp. to their Mot. for Summ. J. at 4).

53. In addition to what is available to Plaintiff when he chooses to participate in SCI-Graterford's weekly one and one-half hour Native American Spirituality group worship and education sessions, the following items are also available to Plaintiff individually: (1) prayer feathers and other feathers; (2) a

headband; (3) a medicine bag containing various small objects and which Plaintiff wears around his neck; (4) permission to grow and maintain long hair pursuant to SCI-Graterford policy; (5) access to books and tapes on his religion; (6) ability to seek personal spiritual advice from an approved outside spiritual advisor; (7) ability to seek spiritual advice through the mail from various outside spiritual advisors; (8) access to approved religious items via the custom of gifting; (9) a prayer cloth; (10) sage found on prison grounds; and (11) the practice of ethical principles. (See Defs.' Post-Oral Arg. Supp. to their Mot. for Summ. J. at 4).

54. In addition to an injunction, Plaintiff seeks the following relief:

removal of all current Native American Coordinators and/or Committee/Board in which Reverend Menei and/or those defendants rely on for advice regarding Native Americans.... and those whom are not bonafide with an official affiliation from a federally recognized Tribal Nation; and those who are in possession of fraudulent tribal documentation (other than from said "Nations"), supported by unrecognized "alleged" Native American Groups in which they belong to.

(Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 5).

55. Defendants argue that summary judgment is appropriate on each of Plaintiff's claims.

II. DISCUSSION³

A. Summary Judgment Standard

³ To the extent that the "Discussion" portion of this decision contains findings of fact and/or conclusions of law in addition to those set forth under such headings, these determinations are deemed to be part of the respective sections even if not expressly stated.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Ultimately, the moving party bears the burden of showing that there is an absence of evidence to support the nonmoving party's case. See id. at 325.

Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is "material" only if it might affect the outcome of the suit under applicable rule of law. See id.

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. See Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Moreover, a court may not consider the credibility or weight of the

evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. See id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. See Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

The court's inquiry at the summary judgment stage is the threshold inquiry of determining whether there is need for a trial--that is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. See Anderson, 477 U.S. at 250-52. If there is sufficient evidence to reasonably expect that a jury could return a verdict in favor of plaintiff, that is enough to thwart imposition of summary judgment. See id. at 248-51.

B. Injunctive Relief

In order to obtain injunctive relief, the moving party must demonstrate the following: (1) the likelihood of success on the merits; (2) a threat of irreparable harm; (3) the lack of harm to the nonmovant; and (4) that the public interest requires the relief requested. See Hoxworth v. Blinder Robinson & Co., 903 F.2d 186, 197 (3d Cir. 1990). If either of the fundamental requirements--the likelihood of success on the merits and the probability of irreparable harm if relief is not granted--is absent, a district court may not grant the requested injunctive relief. See

McKeesport Hosp. v. Accreditation Council for Graduate Med. Educ., 24 F.3d 519, 523 (1994); Hoxworth, 903 F.2d at 197.

When a prisoner requests injunctive relief, said request "must always be viewed with great caution because 'judicial restraint is especially called for in dealing with complex and intractable problems of prison administration.'" Goff v. Harper, 60 F.3d 518, 520 (8th Cir. 1995 (citations omitted)); Forrest v. Nedab, No. CIV.A. 97-4442, 1999 WL 552546, at *3 (E.D. Pa. June 29, 1999); Riley v. Snyder, 72 F. Supp. 2d 456, 460 (D. Del. 1999). Where a prisoner requests an injunction that would require the Court to intervene with the management of a state prison, "appropriate consideration must be given to principles of federalism in determining the availability and scope of equitable relief." Rizzo v. Goode, 423 U.S. 362, 379 (1976); see Meachum v. Fano, 427 U.S. 215, 229, 96 S. Ct. 598, 608 (1976) ("The federal courts do not sit to supervise state prisons, the administration of which is of acute interest to the States.").

C. 42 U.S.C. § 1983

Plaintiff's claims are actionable pursuant to 42 U.S.C. § 1983. To prevail on a § 1983 claim, Plaintiff must demonstrate that the challenged conduct was committed by a person acting under the color of state law and that the conduct deprived the Plaintiff of a right, privilege, or immunity secured by the Constitution or

federal law. See Parratt v. Taylor, 451 U.S. 527, 535, 101 S. Ct. 1908 (1981).

1. Free Exercise of Religion

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." U.S. Const. amend. I. Convicted prisoners do not forfeit all constitutional protections by reason of their incarceration. See O'Lone v. Estate of Shabazz, 482 U.S. 342, 348, 107 S. Ct. 2400, 2404 (1987); Bell v. Wolfish, 441 U.S. 520, 545 99 S. Ct. 1861, 1877 (1979). Nevertheless, "simply because prison inmates retain certain constitutional rights does not mean that these rights are not subject to restrictions and limitations The fact of confinement as well as the legitimate goals and policies of the penal institution limits these retained constitutional rights." Id. at 545-46, 99 S. Ct. at 1877-78.

"[A] prison regulation impinging on inmates' constitutional rights is valid if reasonably related to legitimate penological interests." Cooper, 855 F.2d at 128. The Supreme Court noted that this inquiry necessarily involves the balance of two competing principles: (1) an individual does not surrender the protections which the Constitution provides him when he passes through the prison gate; and (2) prison officials must be given substantial deference in the administration of their institutions. See Turner v. Safley, 482 U.S. 78, 84, 107 S. Ct. 2254 (1987). In light of

these considerations, the Court set forth four relevant factors for evaluating the validity of prison regulations, which the Third Circuit Court of Appeals summarized as follows: (1) whether there is a rational connection between the regulation and the penological interest asserted; (2) whether inmates have alternative means of exercising their rights; (3) what impact accommodation of the right will have on guards, other inmates and the allocation of prison resources generally; and (4) whether alternative methods for accommodation exist at de minimis cost to the penological interest asserted. See Cooper, 855 F.2d at 129 (citing Turner, 482 U.S. at 89-90, 107 S. Ct. 2254). When considering a free exercise claim, "the Court need not perform this analysis with respect to every interference alleged. . . ." Madison v. Horn, No. CIV.A. 97-3143, 1998 WL 531830, at *7 (E.D. Pa. Aug. 21, 1998).

2. Equal Protection

The Fourteenth Amendment provides in relevant part as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law nor deny any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1.

To sustain an equal protection claim "with any significance independent of his or her free exercise claim, the prisoner must

also allege and prove that he or she received different treatment from other similarly situated prisoners. See Johnson v. Horn, 150 F.3d 276, 384 (3d Cir. 1998); Brown v. Borough of Malley, 35 F.3d 846, 850 (3d Cir. 1994). When a prisoner claims a violation of the Equal Protection Clause of the Fourteenth Amendment, the reasonableness of the challenged prison rules and policies must be examined to determine whether distinctions made among religious groups in the prison are reasonably related to legitimate penological interests. See Madison, 1998 WL 531830, at *19; Benjamin v. Coughlin, 905 F.2d 571, 575 (2d Cir. 1990). Moreover, unless the regulations are "arbitrary," the prisoner's claims must fail because religious discrimination "is governed by the religious clauses of the First Amendment, leaving for the equal protection clause only a claim of arbitrariness unrelated to the character of the activity allegedly discriminated against." Reed v. Faulkner, 842 F.2d 960, 962 (7th Cir. 1988).

III. CONCLUSIONS OF LAW

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331.

2. Claim I is claim brought pursuant to the Free Exercise Clause of the First Amendment. Plaintiff clearly has access to his religion and spirituality within the confines of SCI-Graterford. (See, e.g., Defs.' Mot. for Summ. J., "Numbered Exhibits" at D-16; Defs.' Post-Oral Arg. Supp. to their Mot. for Summ. J. at 4-5).

Moreover, this broadly-worded claim is subsumed within other more factually specific claims and is therefore better addressed in the context of those claims. Accordingly, summary judgment will be granted as to Claim I.

3. Claim II is brought pursuant to the Free Exercise Clause of the First Amendment and must be analyzed pursuant to the framework set forth in Turner v. Safley, 482 U.S. 78, 107 S. Ct. 2254 (1987). Plaintiff is not prohibited from participating in group prayer sessions wherein herbs are burned for smudging. Plaintiff is prohibited from smudging in the privacy of his cell. Defendants cite various reasons for the DOC's prohibition of smudging in cells: (1) Defendants' interest in the care and control of inmates is compromised when a prisoner lights a fire, however small, in his cell; (2) the fragrance or aroma produced by the fire can hide other aromas, such as those produced when illicit drugs are consumed; and (3) if smudging were allowed in cells, the DOC would incur oversight would strain personnel and budgetary resources. (See Trans. at 56 & 69; See also, Defs.' Mot. for Summ. J., "Numbered Exhibits" at D-28;). There is clearly a rational connection between the DOC's prohibition of in-cell smudging and the penological interests asserted. Summary judgment will be granted as to Plaintiff's Claim II.

4. Claim III is a free exercise claim. Plaintiff may perform spiritual ceremonies, smudge, and observe religious

feasts. (See Trans. at 52-53 & 64). Therefore, summary judgment will be granted as to Claim III.

5. Claim IV is a free exercise claim. Plaintiff is not denied reasonable access to "sacred spiritual objects/items, materials, . . . and various accoutrements which are needed for prayer and ceremonies" (Pl.'s Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 3). He has access to these items at group prayer sessions. (See Trans. at 52-53). Plaintiff also has access to numerous sacred items in his cell. Plaintiff is allowed to possess his medicine bundle and the items contained therein. (See Trans. at 53). He is allowed to possess his headband. (See Trans. at 53). He is allowed to possess a prayer cloth, a feather, and the sage he finds on the grounds of SCI-Graterford. (See Trans. at 55). He is neither allowed to smudge nor to possess the materials required for smudging; the Court previously discussed why the DOC's smudging prohibition is not violative of the First Amendment. As to Plaintiff's claim regarding religious observance while in the RHU (i.e., the ability to make private prayer (see Trans. at 36)), the limitations placed on Plaintiff's religious observance while in the RHU are also reasonably related to legitimate penological interests. Again, the DOC's prohibition of private smudging is just as valid in the inherently restrictive environment of the RHU as it is in the prison's general population. See, e.g., Acosta v. McGrady, No. CIV.A. 96-2874, 1999 WL 158471, at *6 (E.D. Pa. March

22, 1999 (stating that "regulations barring certain personal religious property in the RHU are inherently reasonable where . . . the prisoner is afforded alternate means of expressing and observing his faith). Finally, Plaintiff never availed himself to an outside spiritual advisor while he was in the RHU although SCI-Graterford allows inmates in the RHU to consult such an advisor. (See Trans. at 55). Summary judgment will be granted as to Claim IV.

6. Claim V is a free exercise claim. Plaintiff does not claim that his sacred objects have been unreasonably searched or inspected. Plaintiff therefore sets forth no cognizable claim for this Court's consideration as the policy and practice in question do not burden Plaintiff's free exercise of religion. Summary judgment will be granted as to Count V.

7. Claim VI is a free exercise claim. The DOC prohibits prisoners from giving gifts to each other as it might create a situation where one prisoner uses a gift to coerce another prisoner. (See Trans. at 71). In deference to this policy, the Court finds that this prohibition is reasonably related to legitimate penological concerns. It must be noted that SCI-Graterford's policy does not foreclose Plaintiff from gifting with non-prisoners. (See Trans. at 71). Plaintiff thus has alternative means available to him regarding the custom of gifting. Therefore, summary judgment will be granted as to this claim

because there is no evidence that Plaintiff's inability to gift with fellow inmates is an unreasonable denial of the rights guaranteed to him by the Constitution.

8. Claim VII is a free exercise claim. Plaintiff produced evidence that sweat lodge activities are not spiritual activities for Cherokees. (See Trans. at 15). Therefore, SCI-Graterford's denial of a sweat lodge cannot be a denial of Plaintiff's First Amendment rights as any activity that takes place therein is not "spiritual" and mandated by his religion. Summary judgment is granted as to this claim.

9. Claim VIII is brought under the Equal Protection Clause of the Fourteenth Amendment. The Supreme Court stated that "[a] special . . . place of worship need not be provided for every faith regardless of size" Cruz v. Beto, 405 U.S. 319, 322, n.2, 92 S. Ct. 1079, 1081 n.2 (1972). As no religious group has its own designated worship space within SCI-Graterford (see Trans. at 53), the practitioners of Native American Spirituality are not treated less favorably than practitioners of other religions. Moreover, SCI-Graterford's policy regarding worship space cannot be arbitrary as it applies equally to all religious groups in the prison. Therefore, this claim must fail.

10. Claim IX is free exercise claim. Plaintiff does not allege that he has been denied reasonable access to medicine and/or spiritual persons or a shaman. He therefore lacks standing to

bring this claim. Summary judgment will be entered against Plaintiff as to Claim IX.

11. Claim X is a free exercise claim. As a prisoner, Plaintiff does not possess the authority to choose an inmate councilman because this places him in a position of control relative to his fellow inmates. (See Trans. at 73-74). As the state prison system does not wish to create a hierarchy among prisoners within its facilities (especially one that bears the imprimatur of state-sanctioned action as may be the case where prison officials allow a prisoner to select the volunteer who will lead services for all Native Americans in that correctional institution), the Plaintiff's inability to select a Native American volunteer to run group worship and education is reasonably related to penological interests and therefore is not violative of Plaintiff's First Amendment rights. Moreover, Plaintiff does not have the right to the clergyperson of his choice. See Madison v. Horn, No. CIV.A. 97-3143, 1998 WL 531830, at *8 n.13 (E.D. Pa. Aug. 21, 1998) (citation omitted). Summary judgment will be entered on Claim X.

12. Claim XI is a free exercise claim. Plaintiff fails to establish that the absence of "Religious Activities Policy" is violative of his First Amendment Rights. He also fails to establish that his Fourteenth Amendment rights are violated because SCI-Graterford lacks such a policy for practitioners of Native

American Spirituality, has such a policy for other religions, and that this difference is detrimental to him. Accordingly, Claim XI must fail.

13. Claim XII is a free exercise claim. At SCI-Graterford, there is a policy regarding the visual inspection of the sacred items of Native Americans. (See Trans. at 54; see also Defs.' Mot. for Summ. J., "Numbered Exhibits" at D-5). Plaintiff does not allege, however, that this policy has been violated as to him. (See Trans. at 54). Therefore, he lacks standing to bring this claim. To the extent that Plaintiff seeks any other relief at to the training of SCI-Graterford's personnel, he fails to establish that he suffered a harm which may be remedied under the First or Fourteenth amendments. Therefore, summary judgment will be granted on Claim XII.

14. Claim XIII is a Fourteenth Amendment claim. As Graterford does not provide training and/or rehabilitation programs specific to any one race or religion, Plaintiff fails to state a Fourteenth Amendment claim. (See Defs.' Post-Oral Argument Supp. to their Mot. for Summ. J. at 3). Moreover, as there are non-religious-based alternatives available to Plaintiff, there exist alternative means for Plaintiff to receive training and/or rehabilitative services that do not impinge on his religious beliefs or violate his First Amendment rights. Finally, the courts have consistently held that prisoners do not have a constitutional

right to any rehabilitation program whatsoever. See Moody v. Daggett, 429 U.S. 78, 88 n.9, 97 S. Ct. 274, 279 n.9 (1976). Therefore, summary judgment will be granted as to Claim XIII.

15. Claim XIV is an equal protection claim. It is not clear that SCI-Graterford's commissary's failure to have non-sacred items which relate to the interests of Native Americans is arbitrary. Indeed, Plaintiff is uncertain whether such items are available to the commissary. Therefore, this claim must fail to the extent it is brought pursuant to the Fourteenth Amendment. Under the First Amendment, "non-sacred spiritual items" do not enjoy constitutional protection because they are, by definition, unnecessary to the practice of Native American Spirituality. Therefore, Claim XIII must fail.

16. Claim XV is a free exercise claim. Plaintiff first claims that his rights are violated because Defendants fail to provide "federally recognized tribal Medicine and/or Spiritual persons who may best guide the defendants accordingly to tribal, religious, and cultural traditions. . . ." (Pl.s' Resp. Mot. in Opp. to Defs.' Summ. J. Mot. at 4). First, there is no constitutional guarantee to cultural and tribal traditions while incarcerated. Second, as Plaintiff complains that these things are being denied to the Defendants and not to him, the claim is not cognizable. To the extent that Plaintiff claims his First Amendment rights are violated because the Defendants have not

established a Native American Board and/or Review Committee, Plaintiff does not demonstrate that his constitutional rights are violated due to this failure. Moreover, the Defendant's alleged failure to have a Native American Board does not contravene Plaintiff's sincere religious beliefs as he presents no evidence that such a Board is necessary to the practice of Native American Spirituality. Finally, to the extent that this claim is brought under the Fourteenth Amendment, no similar board exists for any religion. Therefore, Plaintiff cannot claim unequal treatment under the law on the basis of his religion. Therefore, summary judgment will be entered on this claim.

17. Claim XVI is a free exercise claim. As Plaintiff has not alleged that he was injured due to the enforcement of the "Hair Length" exemption, he lacks standing to bring this claim. (See, e.g., Pl.'s Rebuttal Decl. at ¶ 13). Summary judgment will be entered in Claim XVI.

18. Claim XVII is brought as a free exercise claim. The Defendants' failure to respond to Plaintiff's proposal hardly rises to a Constitutional violation, regardless of the proposal's subject matter. The Court therefore perceives no basis under which Plaintiff can recover on the instant claim under the First or Fourteenth amendments. This claim must fail.

19. Claim XVIII is free exercise claim. A small, controlled, outdoor fire raises multiple, obvious security and safety concerns.

Most evidently, fire not only presents a danger to the prisoners under SCI-Graterford's control and care but to the prison personnel that must supervise the prisoners who use the fire for religious purposes. Prohibiting the religious use of a small, controlled, outdoor fire is reasonably related to legitimate penological interests. Therefore, this claim must fail.

20. Claim XIX is an equal protection claim. Plaintiff's only cognizable argument regarding this claim is that other religious groups within SCI-Graterford have full time personnel available to them for spiritual and religious needs. Plaintiff presents no evidence to demonstrate that these religious groups are similarly situated to SCI-Graterford's Native Americans. Prisons are not required to provide identical resources to different religious groups. See Cruz v. Beto, 405 U.S. 319, 322 n.2, 92 S. Ct. 1079, 1082, n.2 (1972). Plaintiff's instant claim must be dismissed.

21. Claim XX is an equal protection claim. As no religious groups are allowed to raise money at SCI-Graterford, Plaintiff cannot set forth a claim under the Fourteenth Amendment. Therefore, this claim must fail.

22. Claim XXI is a free exercise claim. Plaintiff wishes that the DOC use "Native American" as a racial classification. Plaintiff does not allege that SCI-Graterford's racial classification of him interferes with the practice of his religion. Moreover, SCI-Graterford's records now reflect that Plaintiff is

Native American for both the classification of his race and his religion. (See Defs.' Post-Oral Arg. Supp. to their Mot. for Summ. J. at 2). Therefore, Claim XXI must fail.

23. Claim XXII is a free exercise claim. Plaintiff's allegations do not concern the substance of DOC or SCI-Graterford policies on Native American issues, instead his allegations concern whether such policies are posted within the prison itself. (See Trans. at 32-33). As Plaintiff does not present an issue which impacts the practice of his religion, Claim XXII must fail.

24. Claim XXIII is a free exercise claim. DOC policy allows religious groups to observe feasts that are part of their religious practice. (See Trans. at 64). Nevertheless, it is simply not administratively efficient for the prison to provide each Native American with each meal he needs for particular religious reasons each time a religious day must be observed. To the extent that this claim is brought pursuant to the Fourteenth Amendment, Native Americans at SCI-Graterford recently chose to forego observance of a religious feast. (See Trans. at 64). Therefore, while available to them, SCI-Graterford's Native Americans elected to forego a recent religious feast. Therefore, the difference in treatment among practitioners of Native American Spirituality and other religions is non-existent; any perceived difference in the opportunity to observe religious feasts was self-imposed by SCI-Graterford's practitioners of Native American Spirituality with

whom Plaintiff did not associate. Therefore, Plaintiff's claim is not actionable under the First Amendment or the Fourteenth Amendment.

25. Claim XXIV is subsumed within prior claims and therefore must fail for the reasons stated heretofore.

26. Claim XV is a free exercise claim. Plaintiff does not demonstrate that the use of his birth name interferes with his religion. Moreover, SCI-Graterford's records now reflect that plaintiff is Native American for both the classification of his race and his religion. (See Defs.' Post-Oral Arg. Supp. to their Mot. for Summ. J. at 2). Therefore, Claim XXV must fail.

27. In light of the foregoing, Plaintiff fails to demonstrate that he is likely to succeed on the merits of his claims. Where the movant for injunctive relief fails to show that he or she will succeed on the merits of his or her claims, injunctive relief may not be granted. See McKeesport Hosp. v. Accreditation Council for Graduate Med. Educ., 24 F.3d 519, 523 (1994). Therefore, Plaintiff's prayer for injunctive relief must be denied and Defendants' Motion for Summary Judgment on the merits is **GRANTED**.

This Court's Final Judgment follows.

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

JAMES FOUR DEER WALKING ROBINSON : CIVIL ACTION
 :
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MARTIN HORN, et al. : NO. 97-3657

FINAL JUDGMENT

AND NOW, this 7th day of August, 2000, upon
consideration of Defendants Corrections Officials' ("Defendants")
Motion for Summary Judgment (Docket No. 121), pro se Plaintiff
James Four Deer Walking Robinson's ("Plaintiff") response thereto
(Docket No. 122), Defendants' Reply Brief (Docket No. 125),
Plaintiff's Response Motion in Opposition to Defendants' Reply
Brief (Docket No. 130), Defendants' Post-Oral Argument Supplement
to Motion for Summary Judgment (Docket No. 134), and Plaintiff's
Supplemental Statements and Averments Continued from Hearing of
5/18/2000 (Docket No. 135), IT IS HEREBY ORDERED that said Motion
is **GRANTED**.

IT IS FURTHER ORDERED that judgment is entered in favor of all
Defendants and against the Plaintiff on all claims.

BY THE COURT:

HERBERT J. HUTTON, J.