

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

JAMAL SCOTT and CALVIN : CIVIL ACTION
WILSON :
 :
v. :
 :
 :
MARTIN HORN, et al. : NO. 97-1448

M E M O R A N D U M

Padova, J.

January 21, 1998

Pro se Plaintiffs Jamal Scott and Calvin Wilson, inmates at the State Correctional Institution at Graterford ("SCI-Graterford"), bring this action against Defendants Martin Horn, Commissioner of the Department of Corrections for the Commonwealth of Pennsylvania, Father Francis Menei, Administrator of Religion and Family Services for the Department of Corrections, Donald T. Vaughn, Superintendent of SCI-Graterford, David DiGuglielmo, Deputy Superintendent of SCI-Graterford, and Gary Olinger, Director of Treatment at SCI-Graterford.¹ Plaintiffs, members of the A.I.C.P. Muslim community at SCI-Graterford, assert a claim for declaratory and injunctive relief

¹The parties have agreed to the dismissal of Rasheed Salahuddin, former Chaplain at SCI-Graterford, and the Department of Corrections, which has never been served. Therefore, the portion of Defendants' Motion for Summary Judgment seeking judgment in favor of the Department of Corrections and Rasheed Salahuddin will be denied as moot.

under 42 U.S.C. § 1983, alleging a violation of their First Amendment rights to the free exercise of their religion.²

Before the Court is Defendants' Motion for Summary Judgment. For the reasons set forth below, the Court will grant in part and deny in part Defendants' Motion.

I. FACTS

The following facts are undisputed. Both of the Plaintiffs are inmates at SCI-Graterford. They are members of an Islamic group known as the Association of Islamic Charitable Projects ("A.I.C.P."). The Philadelphia branch of the A.I.C.P. is located at 4431 Walnut Street. As members of A.I.C.P., Plaintiffs' religious beliefs differ from those of other Muslims in certain ways, including some translations and interpretations of the Koran and the direction in which they pray in order to face Mecca.

SCI-Graterford has one Islamic Chaplain, who is an employee of the Department of Corrections. Officials at SCI-Graterford permit separate, communal services at the prison for six different Islamic sects. In addition to one communal Protestant service, communal services are also allowed for a number of different Christian groups, including Seventh Day Adventists,

²By Order entered on September 8, 1997 (Doc. No. 7), the Court dismissed all of Plaintiffs' claims except for Plaintiffs' First Amendment claim.

Jehovah's Witnesses, Episcopalians, and Christian Scientists.

Plaintiffs do not have access to communal services that are congruent with their beliefs. They do have access to other means of practicing their religion, including individual prayer, study of the Koran on their own or in concert with other prisoners, and visits from religious advisors.

Plaintiffs requested recognition of the A.I.C.P. as a religious group at SCI-Graterford, but their request was denied on the grounds that the religious services already offered were adequate to meet Plaintiffs' religious needs. No new Protestant or Islamic group has been approved at SCI-Graterford in the last two years. The Department of Corrections is re-evaluating its policy of recognizing so-called "splinter" religious groups and is considering the possibility of providing a single Islamic service for all Islamic inmates at SCI-Graterford.

II. LEGAL STANDARD

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" only if there is sufficient evidence with which a reasonable jury could find for

the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). Furthermore, bearing in mind that all uncertainties are to be resolved in favor of the nonmoving party, a factual dispute is "material" only if it might affect the outcome of the case. Id.

A party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325, 106 S. Ct. at 2554. After the moving party has met its initial burden, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 322, 106 S. Ct. at 2552.

III. DISCUSSION

Plaintiffs bring this action under 42 U.S.C. § 1983 against Defendants for violation of their rights under the Free Exercise

Clause of the First Amendment of the United States Constitution.³
In particular, Plaintiffs contend that Defendants' failure to provide them with the separate communal services that they have requested and that they consider necessary for worship burdens their free exercise of religion.

In their Motion for Summary Judgment, Defendants do not contest the legitimacy of A.I.C.P. as a religion or the sincerity of Plaintiffs' A.I.C.P. beliefs. Therefore, in analyzing Defendants' Motion, the Court will assume that Plaintiffs are entitled to avail themselves of the protections of the First Amendment. Defendants also do not challenge Plaintiffs' contention that, as A.I.C.P. members, their religious beliefs differ in certain respects from the beliefs of the other Islamic sects for which SCI-Graterford permits communal worship services.

³Plaintiffs have sued the Defendants in both their individual and official capacities. To maintain a claim under Section 1983, Plaintiffs must establish that: (1) the conduct complained of was committed by one acting under color of state law; and (2) the conduct deprived them of rights, privileges, or immunities secured by the Constitution or laws of the United States. 42 U.S.C.A. § 1983; West v. Atkins, 487 U.S. 42, 48, 108 S. Ct. 2250, 2254-55 (1988). Public employees, such as Defendants, "act under state law" when they act in their official capacities or while they exercise their responsibilities pursuant to state law. West, 487 U.S. at 50, 108 S. Ct. at 2255. Plaintiffs can sue Defendants for injunctive relief in their official capacities. Hafer v. Melo, 502 U.S. 21, 27, 112 S. Ct. 358, 362-63 (1991). However, because Plaintiffs' Section 1983 claim for declaratory and injunctive relief would only involve the official capacities of the Defendants, the Court will grant summary judgment on the claim against the Defendants in their individual capacities.

Instead, Defendants advance the following two arguments.⁴ First, Defendants contend that Plaintiffs' free exercise of their religion has not been burdened because Plaintiffs are free to participate in any of the currently-offered communal Islamic services and because Plaintiffs also have alternate avenues available to them for practicing their religion. Second, Defendants maintain that the decision not to provide Plaintiffs with separate communal services is based on legitimate penological interests, including security and cost concerns. Defendants assert that they are studying the possibility of abolishing separate services for different Islamic sects and providing a single communal Islamic service at SCI-Graterford; for that reason, no new religious groups have been recognized at SCI-Graterford during the last two years.

A. Plaintiffs' Free Exercise of Their Religion

Although lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, convicted prisoners do not forfeit all constitutional protections by reason

⁴Defendants also argue that Plaintiffs failed to pursue the internal grievance procedures available to them at SCI-Graterford. To the extent that such an exhaustion requirement applies here, Defendants own submissions demonstrate, and the Court finds, that Plaintiffs' efforts in this regard would be futile. Defendants admit that no new Islamic or Protestant group has been recognized at SCI-Graterford within the past two years.

of their conviction and confinement in prison. O'Lone v. Estate of Shabazz, 482 U.S. 342, 348, 107 S. Ct. 2400, 2404 (1987).

Inmates clearly retain First Amendment protections, applicable to the states by the Fourteenth Amendment, including the directive that no law shall prohibit the free exercise of religion.⁵ Id.

Plaintiffs advance two distinct, but related arguments in support of their free exercise claim. First, Plaintiffs argue that, as members of A.I.C.P., they are not given the same opportunity as other inmates at SCI-Graterford to practice their religion. Plaintiffs point out that at SCI-Graterford, six different Islamic sects are allowed to hold communal services. In addition, Episcopalians, Seventh Day Adventists, Jehovah's Witnesses, and Christian Scientists are also permitted to hold communal services. Because prison officials do not give Plaintiffs, as members of A.I.C.P., an equal opportunity to practice their religion, Plaintiffs argue that their free exercise rights are being burdened by Defendants.

Among the various religious sects represented in a prison, prison officials may not create unequal opportunities to practice religion. Cruz v. Beto, 405 U.S. 319, 322, 92 S. Ct. 1079, 1081-82 (1972) (denying a Buddhist inmate a reasonable opportunity of pursuing his faith comparable to the opportunity afforded fellow

⁵The First Amendment provides as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

prisoners who adhere to conventional religious precepts states a First Amendment violation against state prison officials); Cooper v. Pate, 378 U.S. 546, 84 S. Ct. 1733 (1964)(allegations that prisoner was denied certain privileges enjoyed by other prisoners because of his religious beliefs stated a cause of action); O'Malley v. Brierley, 477 F.2d 785, 795 (3d Cir. 1973)(where state affords inmates the opportunity of practicing a religion, it may not, without reasonable justification, discriminate against a particular religion); Long v. Parker, 390 F.2d 816, 820 (3d Cir. 1968)("Where ... the charge is made that the regulations imposed by prison authorities restricting religious practices fall more harshly on adherents of one faith than another, the courts will scrutinize the reasonableness of such regulations.").

Plaintiffs also argue that their right to freely exercise their religion is being burdened by Defendants' refusal to permit them the opportunity to participate with other A.I.C.P. members in communal prayer, which Plaintiffs submit is an essential part of their religious beliefs. As Defendants correctly point out, the State does not have an affirmative duty to provide every prison inmate with the clergy person or the service of his or her choice. Gittlemacker v. Prasse, 428 F.2d 1, 4-5 (3d Cir. 1970). However, the Court of Appeals for the Third Circuit ("the Third Circuit") has recognized that "an opportunity to worship as a congregation by a substantial number of prisoners may be a basic

religious experience and, therefore, a fundamental exercise of religion by a bona fide religious group." Small v. Lehman, 98 F.3d 762, 765-66 (3d Cir. 1996)(quotations and citations omitted).⁶

On the record currently before the Court, genuine issues of material fact exist as to whether the policy at SCI-Graterford burdens Plaintiffs' right to freely exercise their religion. For example, Plaintiffs maintain that communal prayer is an essential element of their religion. They also claim that significant doctrinal differences exist between their sect and the other Muslim sects that hold communal services; because of these differences, Plaintiffs would be committing an act of blasphemy by attending the available Muslim communal services. In contrast, Defendants assert that it is "a well known fact that Muslims of different sects may pray together." (Defs.' Mot. at 8.) With this critical factual issue in dispute, the Court cannot determine on a motion for summary judgment whether Plaintiffs' First Amendment rights have been burdened.

⁶Small, which held that the Religious Freedom Restoration Act ("RFRA") applies to claims of prisoners, was decided before the United States Supreme Court struck down the RFRA as unconstitutional in City of Boerne v. Flores, ___ U.S. ___, 117 S. Ct. 2157 (1997). Although Small has been overruled in part by Boerne, the finding in Small that communal worship may be a fundamental aspect of the exercise of religion continues to be good law in the Third Circuit.

B. Defendants' Refusal to Permit A.I.C.P. to Hold Communal Services

But the Court's analysis does not stop here, because an inmate's First Amendment rights are not absolute. "[A] prison regulation may validly impinge on an inmate's constitutional rights if it is reasonably related to a legitimate penological interest." Small v. Lehman, 98 F.3d at 765-66 (citing Turner v. Safley, 482 U.S. 78, 93, 107 S. Ct. 2254, 2263 and O'Lone v. Estate of Shabazz, 482 U.S. 342, 353, 107 S. Ct. 2400, 2406 (1987)). To determine the reasonableness of prison management decisions, a court may look to the following factors: (1) whether there is a valid and rational connection between the prison regulation and the legitimate governmental interest justifying the regulation; (2) whether there are alternative means available to the prisoner to exercise the right; (3) the impact the accommodation of the asserted right will have on prison resources and guards; and (4) the existence of easy, obvious alternatives to accommodate the prisoner's rights. Turner, 482 U.S. at 89-90, 107 S. Ct. at 2262.

Defendants offer a number of reasons for their decision not to allow communal services for A.I.C.P. members. However, the existence of disputed factual issues and gaps in the Rule 56 submissions preclude a finding, as a matter of law, that the prison's policy is reasonably related to a legitimate penological

interest. For example, a factual dispute exists as to whether space is available at SCI-Graterford for communal services for A.I.C.P. members. Defendants also submit that security concerns justify the prohibition of communal services for A.I.C.P. members because inmates often form a "gang" under the guise of a "religion" in order to increase their power and status within the prison community and their ability to intimidate and coerce other prisoners. Although this may be true, nothing contained in the Rule 56 submissions suggests that the A.I.C.P. is such a "gang" or that A.I.C.P. members have engaged in intimidation or coercion. Defendants also assert that no new religious groups have been recognized within the last two years because the Department of Corrections is re-evaluating the policy at SCI-Graterford, whereby a number of "splinter" religious groups have been allowed to hold separate communal services. Defendants, however, have not provided the Court with Rule 56 submissions that explain the status of the Department's efforts in this regard. Without such information, the Court cannot determine whether Defendants' refusal to permit A.I.C.P. to hold communal services is reasonably related to a legitimate penological interest.

For the foregoing reasons, the Court will grant in part and deny in part Defendants' Motion for Summary Judgment.

An appropriate Order follows.

