

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

AHMAD ABDUL JABBAR-AL SAMAD, HUD
ABDUL KHABIR, TALHA ABD'ALLAH, and
SA'ID ABDUL'ALA,

Plaintiffs,

v.

TOM RIDGE, ROBERT P. CASEY, MARTIN
L. HORN, JOSEPH D. LEHMAN, DONALD
T. VAUGHN, FATHER FRANCIS MENEI,
and REV. ED NIEDERHISER,

Defendants.

CIVIL ACTION

NO. 96-2274

Gawthrop, J.

April , 1998

M E M O R A N D U M

In this Section 1983 action based on the Free Exercise Clause and the Equal Protection Clause, the pro se plaintiffs, Muslim inmates at SCI-Graterford, challenge the constitutionality of new prison policies. Plaintiffs claim that the recently adopted rule prohibiting inmates from leading religious services violates the tenets of their Islamic religion, and so infringes their right to the free exercise of their religion. Plaintiffs also claim that the prison authorities have unreasonably infringed upon their religion because they must now worship in an interfaith chapel, and because during visitation strip searches, they are exposed naked to other inmates. Defendants explain that the new policy does not violate the Constitution because it

permits each inmate to practice his religion subject only to constraints reasonably necessary for the security and orderly administration of the prison.

Plaintiffs also brought suit under the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb et seq. I denied the defendants' Motion for Summary Judgment on grounds that there were genuine issues of material fact as to the RFRA. Since then, the Supreme Court has found RFRA to be unconstitutional. Boerne v. Flores, ___ U.S. ____, 117 S.Ct. 2157, 138 L. Ed.2d 624 (1997). Accordingly, I ordered the plaintiffs to show cause why their Free Exercise and Equal Protection claims should not be dismissed. Although a little unusual in federal procedure, the plaintiffs' responding motion to show cause will be evaluated, so as to give the plaintiffs the benefit of every reasonable inference from the evidence, and at this juncture will be treated as if it were a response to a motion for summary judgment. Upon the following reasoning, I shall grant summary judgment to the defendants.

I. Standard of Review

Summary judgment is proper "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). Unless evidence in the record would permit a jury to return a verdict for the nonmoving party, there are no issues for trial, and summary judgment becomes appropriate. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In considering a motion for summary judgment, a court does not resolve factual disputes or make credibility determinations, and must view facts and inferences in the light most favorable to the party opposing the motion. Siegel Transfer, Inc. v. Carrier Express, Inc., 54 F.3d 1125, 1127 (3d Cir. 1995). The party opposing the summary judgment motion must come forward with sufficient facts to show there is a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

II. The Free Exercise Clause

The Free Exercise Clause reads: "Congress shall make no law . . . prohibiting the free exercise [of religion]." U.S. Const. amend. I. In order to be entitled to the protection of that clause, however, plaintiffs' convictions must be grounded in a sincere religious belief. See e.g., Frazee v. Illinois Dept. of Employment Sec., 489 U.S. 829, 832-33 (1989). It is undisputed that plaintiffs' claims are sincerely grounded in the Islamic faith. Thus, the Free Exercise clause applies.

Although "prisoners [must] be accorded those rights not

fundamentally inconsistent with imprisonment itself," Monmouth Cty Corr'l Instit'l Inmates v. Lanzaro, 834 F.2d 326, 333 (3d Cir. 1987) (quoting Hudson v. Palmer, 468 U.S. 517, 523 (1984)), in evaluating alleged violations of those rights, the court must balance plaintiffs' constitutional rights against the difficulty of operating an effective and secure prison system, which inevitably requires the limitation of some significant privileges. Thornburgh v. Abbott, 490 U.S. 401, 407 (1989). The prison authorities must have the flexibility to "anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration." O'Lone v. Shabazz, 482 U.S. 342, 349 (1987). Addressing the tension between prison regulations and constitutional rights the Court, in Turner v. Safley, 482 U.S. 78 (1987), held that a prison regulation which encroaches on inmates' constitutional rights is nonetheless "valid if it is reasonably related to legitimate penological interests." Id. at 89. To evaluate whether a given regulation meets this standard, the court should consider the connection between the asserted justification and the regulation, what alternatives prisoners retain for exercising the right in question, the impact accommodation will have on prison resource allocation, and whether there are easy alternatives. Id. In this inquiry, courts are not to determine whether there is a better means of accommodating the concerns at issue, but simply

whether the prison's chosen method is reasonable. See id. At 84, 89.

A. Outside Religious Leader

Plaintiffs claim that the new prison rule banning inmates from leading religious services violates their free exercise rights. Defendants claim that the regulation is needed to maintain prison security. Maintaining security in a prison is unquestionably a legitimate penological interest. Pell v. Procunier, 417 U.S. 817, 823 (1974).

The defendants state that this rule protects against security threats that occur when inmates leading services attain power and influence over other inmates. Previously, prisoners could choose a leader from the prison population to conduct religious services. The policy now provides that only outside religious leaders, chosen by prison administrators, may conduct services. However, when an outside leader is unavailable, the policy does allow for an inmate to conduct services with adequate supervision from another prison chaplain.

Plaintiffs contend that this rule prevents them from faithfully following Islam, which requires that the Imam, their religious leader, be of the prison population. To support their argument that the policy is not a reasonable response to security concerns, and, thus, is invalid under Turner, they state that

under the previous policy SCI-Graterford had not experienced any significant disciplinary problems with the Muslim community.

Defendants respond that the presence of an outside cleric discourages the establishment of a hierarchy or leadership system within the inmate population. Although defendants have not submitted examples of security problems involving plaintiffs, they have introduced affidavits regarding two incidents at other institutions where inmate-led religious activities became disruptive and threatening. Defendants also have submitted declarations from five Islamic scholars, recognizing the reasonableness of prison officials' security concerns in light of an Islamic dictate disapproving of an individual who disobeys his Imam. Defendants argue that if a prisoner were the official Imam, he would exert tremendous influence over other inmate believers, which would extend to all areas, not just those related to religious views. See O'Lone, 482 U.S. at 349. Defendants thus suggest that the new policy is a reasonable attempt to anticipate security threats.

For SCI-Graterford, and all other prisons under the Pennsylvania Department of Corrections, to have a rule requiring the cleric be an outsider is, in my view, reasonable. It makes security sense, a position embraced by many other courts, including the one that binds this one. In Gittlemacker v. Prasse, 428 F.2d 1 (3d Cir. 1970), the court held: "The

requirement that a state interpose no unreasonable barriers to the free exercise of religion cannot be equated with the suggestion that the state has an affirmative duty to provide, furnish, or supply every inmate with a clergyman or religious services of his choice." Id. at 4; see also Anderson v. Angelone, 123 F.3d 1197, 1198-99 (9th Cir. 1997) (upholding as reasonable, under Turner analysis, prison regulation prohibiting inmates from leading religious services); Benjamin v. Coughlin, 905 F.2d 571, 577-78 (2d Cir. 1990) (same); Hadi v. Horn, 830 F.2d 779, 784-85 (7th Cir. 1987) (same); Tisdale v. Dobbs, 807 F.2d 734, 738-39 (8th Cir. 1986) (upholding regulation requiring religious service to be led by "outside free-world sponsor"); and Cooper v. Tard, 855 F.2d 125, 129 (3d Cir. 1988) (sustaining regulation prohibiting unsupervised inmate religious activity).

The purpose of the prison rule, which I find to be proper, is to ensure that inmate activity is supervised by responsible individuals, lessening the possibility that inmate religious groups will subvert prison authority. See O'Lone, 482 U.S. at 353 (recognizing legitimate security concerns regarding potential for affinity groups to result in organizational structure and leadership roles that may challenge institutional authority); see also Hadi v. Horn, 830 F.2d 779 (7th Cir. 1987) ("[P]rison officials need not wait for a problem to arise before taking steps to minimize security risks."). Additionally, plaintiffs

are able to continue to practice their religion. If an outside cleric is unavailable, an inmate may lead services as long as a chaplain supervisor is present. This provision ensures that regular religious services will be maintained, but lessens the potential for influence that an inmate would have if he were to act daily as a religious leader. See O'Lone, 482 U.S. at 352 (that prisoners retain the ability to practice their religion in some manner, even though practice in a specific manner is completely denied, supports the reasonableness of the rule).

Moreover, there are no ready alternatives to the regulation that satisfy defendants' security concerns. I thus find that the rule is reasonably related to a legitimate security concern.

B. Interfaith Chapel

The defendants provide a single interfaith chapel where all religious groups worship. As Sunni Muslims, plaintiffs argue that services with other Islamic sects, with whom they have significant doctrinal differences, infringe upon their free exercise rights. They also oppose the relocation of their semi-annual Eid feast to a field house. Previously, they held both services and feasts in the mosque or masjid area in the prison basement.

Defendants respond that an interfaith chapel designed to accommodate all religious groups -- Christian, Islamic, Jewish,

and others -- is necessary, given the limited resources of space and staff. They also state that the former masjid area posed a fire and safety hazard, and that its structure, with drop ceilings and raised floors, could easily be used to store contraband, presenting a legitimate security concern. As for the field house, they contend that it provides a better viewing location for supervising the inmate group activities, and that holding one concurrent Eid feast for all Islamic groups is necessary due to the limited number of corrections staff.

Applying the Turner factors to the evidence presented, I conclude that the defendants' regulations are reasonable. See, e.g., Clifton v. Craig, 924 F.2d 182, 184 (10th Cir. 1991), cert. denied, 502 U.S. 827 (1991) (affirming summary judgment ruling that refusal to permit church of which inmate was a member to hold Sunday morning worship services apart from all other Christian groups, was reasonable, where factors such as security, staffing, and space precluded separate accommodation). An interfaith chapel still provides the plaintiffs an opportunity to practice integral aspects of their religion. The policy is not intended to deprive plaintiffs of their religious rights, but to accommodate the realities and limitations of the prison environment itself. There simply is too little space for religious programming to permit each denomination to hold separate services and celebrations. I thus find, under Turner,

that the single interfaith chapel does not offend the Free Exercise Clause of the First Amendment.

C. Strip Search

Before and after visits, inmates are strip-searched. Plaintiffs claim that being exposed naked to other prisoners violates their faith, and thus their free exercise rights. Previously, there were two full-length screens behind which inmates with privacy concerns could undress. In early 1996, prison authorities removed the full-length screens and replaced them with partial screens, which shielded inmates only from the knees to the lower waist area. Defendants have recently modified the policy to allow inmates to put on their undershorts before moving away from the partial screen. Plaintiffs complain that the partial screen is inadequate because, although the screen blocks the view of the prison staff, it does not block the view of other inmates in the room.

Defendants state that searches in the changing room adjacent to the contact visiting room address an important security issue because correction officials must ensure that inmates do not pass contraband, such as illegal drugs or weapons, during the visits. In the past, guards have found contraband whose source was traced to the visiting room. Thus, the visiting room area requires close surveillance. Conducting strip searches with groups of

inmates present is necessary, they claim, because often only one officer is available to supervise the hundreds of inmates who pass through the changing room in a single day.

The authorities determined that the use of full-length screens created a security risk by blocking the view of officers trying to determine whether contraband was present. Also, if an officer happened to be on the same side of the screen as the inmate, the officer's view of the rest of the room would be impeded.

Modesty standards and nudity taboos are a well established part of the exercise of Islam, and many other religions. However, evidence of previous problems with contraband entering the prison through visits supports, and indeed requires, the finding that there is a rational connection between the regulation and the government's legitimate justification, security and integrity of the prison environment. Constrained resources make it necessary to have many inmates present in the room at one time, and no less costly alternative has been proposed. There also is evidence that defendants are not totally rigid, but rather do attempt to make adjustments where possible, further demonstrating the reasonableness of the prison's method. Accordingly, I find that the strip searches do not violate the First Amendment.

III. Equal Protection

Lastly, plaintiffs argue that the prison rule, requiring outside religious leaders to conduct services, discriminates against religious groups because civic organizations may continue to pick their leaders from within the prison population. In a related case with a similar argument, I held that the Equal Protection Clause applies, and that "the prison regulation can withstand an Equal Protection challenge if the distinction it draws between civic and religious groups is rationally related to a legitimate state interest." Samad v. Horn, 913 F. Supp. 373, 376 (E.D. Pa. 1995) (citation omitted).

Defendants here argue that the issue has become moot. Since October 1995, inmate civic groups are no longer permitted to hold meetings at SCI-Graterford. In the event that meetings are permitted again, they will be held only under the direct leadership of prison staff. Plaintiffs have not come forward with any evidence to dispute that the groups are now treated equally. Thus, summary judgment for defendants is granted.

An order follows.