

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

KHOM SOEUM : CIVIL ACTION
: :
v. : :
: :
REV. ZEIST AND : :
SUPERINTENDENT DRAGOVICH : NO. 97-3517

MEMORANDUM ORDER

Plaintiff is an inmate at SCI Mahanoy where he is in the fourth year of a five to ten year sentence for rape. He has asserted claims under 42 U.S.C. § 1983 against the prison superintendent and chaplain for alleged violation of his First Amendment right to free exercise of religion and deprivation of property without procedural due process. Plaintiff asks for \$15,000 in damages and injunctive relief to permit him to practice his religion. Presently before the court is defendants' motion for summary judgment.¹

From the competent evidence of record, as uncontroverted and otherwise viewed in a light most favorable to

¹ In considering a motion for summary judgment, the court determines whether the pleadings, depositions, answers to interrogatories and admissions on file, together with any affidavits, show there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986). Only facts that may affect the outcome of a case under applicable law are "material." Id. at 256. Although the movant must initially demonstrate the absence of genuine issues of material fact, the non-movant must then establish the existence of each element on which he bears the burden of proof. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)).

plaintiff, the pertinent facts are as follow.

Plaintiff's step-sister, Mom Srey, mailed three cassette tapes to Mahanoy for plaintiff in June 1996. Plaintiff's step-sister informed him that the tapes were religious in nature and were obtained from a Buddhist monk in Cambodia. Plaintiff is a Buddhist.

The Department of Corrections has a policy which governs the receipt of tapes for access by inmates.² The policy provides for the purchase by the librarian of cassette tapes for inmate use directly from a vendor or authorized distributor. Cassette tapes for use in conjunction with educational or vocational programs may also be obtained from an accredited institution and religious tapes may be obtained from a recognized religious group. Religious tapes are reviewed by the Institutional Chaplaincy Program Director to determine eligibility for placement in the cassette collection. Tapes are not accepted from any other source including "inmates, inmates' families, friends, spiritual advisers or staff."

The cassette tape policy reflects legitimate institutional security and administrative concerns. As noted by Superintendent Dragovich, tapes from unknown or unverifiable sources may contain escape plans or incitements to riot or commit particular acts of violence against a staff member or other

² See DOC Policy No. 7.6.3.

inmate, and the administrative burden of reviewing every tape from every source would be debilitating.

At the time Ms. Srey sent the tapes to Mahanoy, Rev. Zeist was the Acting Institutional Chaplaincy Director.³ Upon review of the tapes at issue, Rev. Zeist noticed they were "homemade." He determined that the tapes did not meet the requirements for admission. They were not purchased directly from an authorized distributor or vender, they were not sent by an accredited institution for use in an educational or vocational program and they were not from a recognized religious group.

Rev. Zeist listened to the tapes. Based upon the "contemporary style, rhythm and instrumentals," he determined they were "more like pop music" than "religious in nature." Rev. Zeist submitted the tapes to a practicing Buddhist who was trained at Nachiren Shosu in the practices and doctrines of Buddhism. He listened to the tapes and characterized them as "Thailand Top-40 music."

On July 9, 1996, Rev. Zeist informed plaintiff that the tapes were not religious and had been disapproved for acceptance into the institution. Plaintiff was informed by Rev. Zeist that he could either have the tapes sent out or have them destroyed and should advise Rev. Zeist of his decision.

³ It appears that the actual spelling of defendant's name may be Zeist. As he has been sued as Rev. Zeist and has never filed a motion to amend the caption, however, the court refers to him as Rev. Zeist.

On July 11, 1996, plaintiff submitted an Inmate Request to Judy Kleiman, the Inmate Program Manager, asking her to assist plaintiff in receiving the tapes. On July 12, 1996, pursuant to the instruction of Ms. Kleiman, Rev. Zeist responded to plaintiff's request. He repeated what he told plaintiff on July 9, 1996 regarding the nature of the tapes and that they had not come from a recognized religious group or authorized vendor or distributor. On July 15, 1996, plaintiff came to Rev. Zeist's office to request the tapes. Rev. Zeist again explained to plaintiff why the tapes were disapproved and the process by which they could either be returned or destroyed.

On August 15, 1996, plaintiff sent an Inmate Request to Lou Aita, the prison Music Director, seeking his assistance in getting the tapes. Mr. Aita responded on August 21, 1996 that the policy allowing religious tapes did not extend to cultural music. In September 1996, Rev. Zeist turned the tapes over to the Security Office staff at Mahanoy who destroyed them.

Plaintiff filed a grievance dated September 16, 1996 concerning the disapproval of the tapes. Ms. Kleiman reviewed the grievance and determined the actions taken regarding the disapproval of the tapes were appropriate and that plaintiff had been informed as to the procedure to utilize to prevent their destruction.

On October 8, 1996 plaintiff appealed to Superintendent Dragovich. On October 9, 1996, he responded that the appeal was denied based on a determination the tapes were not religious and

did not come from an approved source. Superintendent Dragovich informed plaintiff that the final level of appeal was the Central Office Review Committee ("CORC"). Plaintiff never contacted the CORC regarding this grievance.

On April 25, 1997, Superintendent Dragovich received a request from plaintiff for "compensation/reimbursement" of \$100.00 for the cassette tapes that had been destroyed. Superintendent Dragovich responded that the tapes were destroyed because plaintiff took no action to effect their return and that he would not be reimbursed for them.⁴

Father Ronald Bowman is presently the Chaplaincy Program Director at Mahanoy. Since the tapes at issue in this action were rejected, plaintiff has received Buddhist tapes which Fr. Bowman accepted into the prison library collection. In March 1997, Fr. Bowman reviewed six cassette tapes which were submitted as Buddhist religious music. Four of the tapes were accepted and two were rejected after Fr. Bowman determined they were actually popular music. One of the rejected tapes began with chanting which abruptly ended after three minutes when the sound of electric guitars and snare drums started.

Plaintiff acknowledged in his deposition that he is currently able to practice his religion, listen to religious

⁴ There is no evidence of what amount, if any, the tapes in question actually cost. Plaintiff simply characterized them as "rare" and "valued at \$100," presumably by him.

tapes and keep a picture of a Buddhist religious figure on his cell wall.

The only reasonable conclusion from the record presented is the tapes did not come from an allowable source under a DOC policy which is rationally related to legitimate institutional concerns and even accepting hearsay evidence that the tapes were obtained from a Buddhist monk, they contained popular music and not religious material. Plaintiff has acknowledged that he is being permitted to listen to tapes which are religious and to practice his religion. Plaintiff has failed to show any violation or threatened violation of his First Amendment right to free exercise of religion by either defendant or anyone else.

Even assuming that the refusal to grant an inmate access to an item prohibited by prison regulations can constitute a deprivation of (his) property, it is uncontroverted that plaintiff could have returned the tapes to his step-sister for maintenance and was able to pursue relief through DOC grievance procedures.⁵

ACCORDINGLY, this day of July, 1998, upon consideration of defendants' Motion for Summary Judgment and in the absence of any response thereto, **IT IS HEREBY ORDERED** that

⁵ The DOC grievance system provides a constitutionally adequate remedy for loss or destruction of property. See Drexel v. Horn, 1997 WL 356484, *4 (E.D. Pa. June 20, 1997); Tirado v. Stepanik, 1997 WL 335747, *2 (E.D. Pa. May 27, 1997); Iseley v. Horn, 1996 WL 510090, at *6 (E.D. Pa. Sept. 3, 1996).

said Motion is **GRANTED** and **JUDGMENT is ENTERED** in the above action for defendants and against plaintiff.

BY THE COURT:

JAY C. WALDMAN, J.