

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Roanoke Division

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WILLIAM R. COUCH,
Plaintiff,

v.

CIVIL ACTION NO. 7:05-cv-11642

JOHN JABE, et al.,
Defendant(s).

SUPPLEMENTAL PLEADINGS

COMES NOW your Plaintiff, William R. Couch (hereinafter "Couch") pro se, pursuant to Rule 15 (d) of the Federal Rules Of Civil Procedure, and presents to this Honorable Court his supplemental pleadings.

1. Couch alleges that defendants maliciously or with deliberate indifference, during the month of Ramadan in the year 2005, deprived Couch of adequate calories and nutrition, deprived Couch of the Eid-Ul-Fitr Meal, and prevented Couch from observing the Eid-Ul-Fitr Prayer in violation of Couch's right to freely exercise his religious beliefs.

2. Specifically, Couch alleges that during Ramadan 2005, defendants restricted Couch's caloric intake to a mere 1000 calories per day, forced Couch to observe 31 days of Ramadan (though Ramadan may not last more than 30 days), scheduled the Eid Prayer at night (though the Eid Prayer may be performed only on the morning following Ramadan), and held the Eid Meal 4 days after Ramadan ended (though the Eid Meal must be served within 3 days after Ramadan ends.¹

3. In 2005, The Keen Mountain Correctional Center ("the prison") required the inmates who participated in the Ramadan fast to observe the first day of fasting beginning at dawn on October 5, 2005, and to observe the final day of fasting ending at sunset on November 4, 2005. These dates constitute 31 days of fasting.²

4. Moreover, prison officials forced Couch to fast on November 4th — the 31st day — under threat that Couch would be barred from the Eid Meal. Then, on November 7, 2005, four days after Ramadan ended, prison officials held the Eid Prayer and the Eid Meal.

5. Defendants, in their response to Couch's grievance of these matters, concede the dates as identified by Couch but insist their actions were in accord with VDOC policy.

A) Defendants Violated VDOC Policy

6. Defendants' response to Couch's complaints that defendants forced Couch to observe 31 days of fasting, and that defendants served the Eid Meal more than 3 days after Ramadan ended reveals the following:

¹ For the sake of brevity and to avoid needless repetition Couch, having previously incorporated by reference the instant pleading into his brief in opposition to defendants' motion to dismiss (Plain. Br. Opp. p.2 ¶6), here omits the Islamic doctrine and VDOC policy upon which his claims are based.

² In 2005, the Ramadan fast began on October 5th, and ended on November 3rd. Eid observances began on November 4, 2005. (Suppl.Exh. (I):Islamic Calendars). Ironically, this multi-year calendar is the very calendar Defendant Mike Oslin produced in 2004 to defend Couch's complaints then that defendants improperly served the Eid Meal during Ramadan rather than after Ramadan. (Compl.p.24-29 ¶¶80-95).

7. Prison officials received two different memoranda from VDOC Deputy Director John Jabe regarding the dates for the beginning and the ending of Ramadan.

8. In the first memo, dated August 29, 2005, Mr. Jabe directed the prison to observe Ramadan beginning on the evening of October 5, 2005,³ with the first day of fasting to commence at dawn October 6, 2005, and continue for 30 calendar days until sunset November 4, 2005. (Suppl. Exh. (II); Level-I Amended Grievance Response).

9. However, in a second corrective memo, dated September 21, 2005, (which abrogated the earlier memo of August 29th), Dep. Dir. Jabe informed prison officials that the Ramadan "Religious observances [would] start on the evening of October 4th, with the first full day of Ramadan [fasting] being October 5th." Thus, Jabe's corrective memo advanced by one day the first day of fasting from October 6th, to October 5th. However, prison officials then failed to also advance the ending date for the fast from November 4th to November 3rd.

10. Simply stated, defendants violated VDOC "policy" when the prison began observing the fast on October 5th as directed in the corrective memo, but then ended the fast 31 days later on November 4th per the abrogated memo.

³ Days of the Islamic lunar calendar technically begin at sunset. Thus, according to Jabe's memo, Ramadan began at sunset on October 5th, 2005, with the first day of fasting to begin at dawn October 6th, 2005.

11. Because the Ramadan fast may not last longer than 30 days, and because the fast, in fact, began on October 5, 2005, necessarily the final day of fasting was November 3, 2005. And, in accord with Islamic tenets and VDOC DOP #601, the Eid Prayer was to be held on the morning of November 4th, the day after Ramadan ended, and the Eid Meal was to be held no later than November 6, 2005 (a date within 3 days of the end of Ramadan on Nov.3rd). Defendants, however, held the Eid Prayer and the Eid Meal at 6:00 p.m. on November 7, 2005 — a date four days after Ramadan actually ended.

12. All of these facts are easily discerned from Couch's Grievance and the Warden's Amended Response thereto. Yet, on appeal, Regional Director Larry Huffman, in rubberstamping the Warden's response, simply refused to address Couch's core contention that prison officials improperly relied on Jabe's abrogated memo to extend Ramadan to 31 days. Huffman does not deny that prison officials extended Ramadan to 31 days. Rather, Huffman baldly asserts that "Departmental policies and procedures have been followed." (Supl. Exh. (III): Level -II Response). Couch submits that this is but one example of defendants' deliberate indifference about which Couch complains.

B) Defendants Were Apprised Of Their Wrongful Conduct

13. During Ramadan prison policy prohibits those inmates who participate in the Ramadan fast from eating any of the 3 meals served to the non-fasting inmates. And prison officials aggressively police the dining halls for inmates who violate said policy.

14. When officials observe a fast participant eating a regular meal the inmate is immediately removed from the passlist for the fast and for the Eid Observances. Indeed, by the end of the third week of Ramadan, prison officials had barred from the fast more than 40% ⁴ of the total number of fast participants. (Supl. Exh. (IV): Ramadan Passlist, Oct. 26, 2005). Couch attributes the high percentage of fast participants barred from the fast for eating regular meals to the participants' inability to endure the starvation diet to which defendants subjected them.

15. At about 9:30 a.m. on November 4, 2005, while the prison was observing the 31st day of fasting, Couch saw Chief of Security Major Newberry pass by Couch's workplace at the law-library and Couch approached Newberry. Couch explained to Newberry that the prison was improperly observing the 31st day of fasting and that Ramadan had, in fact, ended on the previous day, November 3rd.

16. Couch also complained that Couch had been compelled to accept a pre-dawn cold-bag meal under threat of having his name removed from the passlist for the Eid-Ul-Fitr Meal, that Couch had been prevented from eating the prison's regular breakfast, and, most importantly, that Couch did not want to forego his regular lunch meal that day.

17. Newberry told Couch that Newberry was not sure why Ramadan had been extended but that he believed the extension was

⁴ 108 initial fast participants (65 grand total + 43 inmates removed equals 108 initial participants) minus the 43 inmates removed, constitutes 40% of the initial total participants.

due to a memo from Dep. Dir. John Jabe to the Warden. Newberry emphasized that Couch would be barred from the Eid Meal if officials observed Couch eating lunch in the dining hall, and Newberry suggested Couch eat for lunch the bag meal Couch had been served before dawn. When couch said that he had already eaten the pre-dawn meal, Newberry suggested Couch eat some of Couch's commissary items.

18. Then, just 2 hours after speaking with Newberry, Couch filed an Emergency Grievance wherein he complained that Ramadan was being improperly extended and that Couch was being denied a lunch meal. Sergeant J. Johnson replied that "Ramadan started on 10-5-05 and runs thru 11-4-05. It starts at sundown on 10-5-05 thru 11-4-05 which is 30 days." (Supl. Exh. (V): Emergency Grievance). Couch was not permitted to eat the lunch meal.

19. On the following morning, Saturday, November 5, 2005, the Operations Officer, Mrs. L. Barbetto, entered Couch's housing unit and Couch complained to her that he had been denied the prior day's lunch. Barbetto emphatically refused to discuss with Couch Couch's complaint that Ramadan had been improperly extended and she repeatedly instructed Couch to address his complaints to Assistant Warden K. Pickerel.

20. At lunch that same day, in the dining hall (though Couch could not eat lunch), Couch spoke to Sgt. Johnson who had responded to Couch's emergency grievance. Couch explained to Johnson that, contrary to Johnson's Grievance Response, the prison actually observed the first full day of fasting on Oct.5 and fasted

through Nov. 4th, and that constituted 31 days of fasting. Johnson conceded that if Couch's dates were correct then the prison had extended Ramadan. Sgt. Johnson explained that the dates he provided in the emergency grievance response were dates provided to him by a kitchen supervisor.

21. At that moment, Couch and Johnson observed Mrs. Barbetto walking near the dining hall and Johnson told Couch he would try to get some clarification from Barbetto regarding Couch's complaint. Couch then watched and waited as Johnson and Barbetto spoke for approximately 10 minutes. When they finished speaking Johnson returned to Couch's area but attempted to walk past Couch without speaking. Couch asked Johnson whether he had received clarification from Barbetto and Johnson replied "not much." Couch then remarked that Johnson and Barbetto had talked for 10 minutes, to which Johnson replied that they had also discussed other things. Johnson did not stop walking away from Couch and Couch, trailing behind, asked whether Barbetto had instructed Johnson to not speak to Couch regarding Couch's complaints. Johnson denied that she had but Johnson said he was too busy to talk further with Couch.

22. On Monday, November 7, 2005, Couch spoke with Assistant Warden Pickerel about the extended Ramadan and the denial of the lunch meal. Pickerel explained that the prison was simply following policy from Dep. Dir. John Jabe.

23. So, after speaking with Pickerel, Couch filed an Informal Complaint wherein he detailed his complaints. The response from Treatment Program Supervisor F. Lockhart was that the prison had followed policy. (Supl.Exh. (VI): Complaint Response).

24. Then, on November 17, 2005, Couch filed a Regular Grievance wherein he detailed his complaints.(Supl.Exh. (VII): Regular Grievance).

25. The Warden's initial Level-I Response simply denied Couch's assertion that the prison had observed the first day of Ramadan on October 5,2005. The Warden asserted that the Prison observed the first day of fasting on October 6, 2005, and that ending Ramadan on November 4, 2005 constituted only 30 days of fasting. (Supl. Exh. (VIII): Level - I Response).

26. However, after Couch's hue and cry to all and sundry that the prison had, in fact, observed the first day of fasting on October 5th, (Supl. Exh. (IX): Complaint and Grievance), the Warden prepared an Amended Level-I Response wherein Warden conceded the dates identified by Couch but, nevertheless, deemed the Grievance unfounded because, the Warden contended, the prison simply followed policy from Dep. Dir. Jabe. (Supl. Exh. (II), id.)

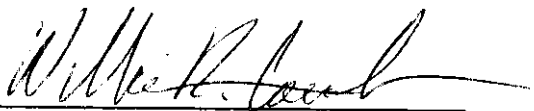
27. Couch appealed the Amended Level-I Response to Regional Director Larry Huffman who upheld the Warden's decision but who failed to address the basis of the appeal, namely, that prison officials used a corrected memo to begin Ramadan but used an abrogated memo to extend Ramadan to 31 days.

28. Finally, it must be noted that prison officials do admit to Couch, in private, that their actions are wrong, and they promise to "fix it next year." However, officially, through grievances, et cetera, officials maintain that they have done no wrong. Thus, they continue, year after year, in one form or another, to deprive Couch of his right to freely exercise his religious beliefs.

It is for all these reasons that Couch, at significant expense to the tax-paying public, is compelled now to prosecute this § 1983.

WHEREFORE, for all the reasons stated, your Plaintiff requests this Court deny defendants' motion for summary judgment and set this matter for trial, and grant any other relief the the Court deems appropriate.

Respectfully submitted,



William R. Couch

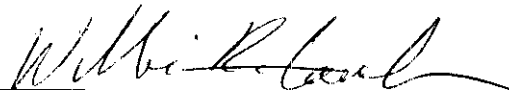
William R. Couch, #186347
Keen Mountain Correctional Center
Post Office Box 860
Oakwood, Virginia 24631

VERIFICATION

I affirm that I am the Plaintiff in this § 1983 action and I know the content of the foregoing Motion To Supplement Pleadings and the Supplemental Pleadings; that it is true of my own Knowledge, except as to those matters that are stated in it to be based on my own information and beliefs; and to those matters, I also believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

2/3/06

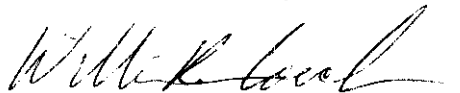
DATE



SIGNATURE OF AFFIRMANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of February, 2006, a true copy of the foregoing Motion To Supplement Pleadings and the Supplemental Pleadings was mailed, first-class postage prepaid, to counsel for Defendants herein, William W. Muse, Senior Assistant Attorney General, 900 East Main Street, Richmond, Virginia 23219.



William R. Couch