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United States District Court, S.D. New York.

Thomas PUGH, Jr., Errol Ennis, Edward Hamil and Clay Chatin, Plaintiffs,
v.
Glen GOORD, Commissioner of the New York State Department of Correctional Services, William Mazzuca, Superintendent of Fishkill Correctional Facility, Ada Perez, Deputy Superintendent of Programs for Fishkill Correctional Facility, Lewis Goidel, Grievance Supervisor for Fishkill Correctional Facility, Thomas Eagen, Grievance Director of the New York State Department of Correctional Services, and Warith Deen Umar, Administrative Chaplain of the New York State Department of Correctional Services, Defendants.

No. 00 Civ. 7279(GEL). | Oct. 10, 2002.

Shi'ite Muslim inmates of state prison brought §1983 First Amendment action challenging prison's practice of refusing to provide separate religious services for Shi'ite and Sunni Muslim inmates. The District Court, 184 F.Supp.2d 326, Lynch, J., dismissed complaint, finding that state corrections department's justifications for refusing to provide separate congregate services were reasonable. On inmates' motion for relief from judgment, the Court held that appeal, rather than motion for relief from judgment, was inmates' proper remedy, since original ruling was made as a matter of law on assumption that inmates' religious freedom was infringed by prison's actions.

Motion denied.

West Headnotes (1)

[1] **Federal Civil Procedure**
Grounds and objections

Appeal, rather than motion for relief from judgment, was proper remedy for Shi'ite Muslim inmates of state prison following federal district court's dismissal of their §1983 First Amendment action challenging prison's refusal to provide separate congregate services for Shi'ite and Sunni Muslim inmates; court had decided as a matter of law that state corrections department's justifications for refusing to provide separate services were reasonable, on assumption that Shi'ite inmates' ability to practice their religion was being infringed, and thus inmates' additional showing regarding infringement did not affect original ruling. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. §1983; Fed.R.Civ.P. 60(b).

Cases that cite this headnote

Attorneys and Law Firms

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Leonard A. Cohen, Assistant Attorney General, for Defendants Glen Goord, William Mazzuca, Ada Perez. Lewis Goidel, Thomas Eagen and Warith Deen Umar.

Opinion

OPINION AND ORDER

LYNCH, J.

***1** Plaintiffs Thomas Pugh. Edward Hamil and Clay Chatin,[1] New York state prisoners, acting pro se, brought this action pursuant to 42 U.S.C. § 1983 challenging the program of the New York State Department of Correctional Services ("DOCS") for accommodating the religious needs of Muslim prisoners as violative of the Free Exercise and Equal Protection rights of Shi'ite inmates. On December 28, 2001, this Court denied plaintiffs' motion for a preliminary injunction and dismissed their complaint. *Pugh v. Goord,* 184 F.Supp.2d 326 (S.D.N.Y.2002).[2]

On March 15, 2002, plaintiffs brought this motion pursuant to Fed.R.Civ.P. 60(b), seeking vacatur of the dismissal of the complaint .[3] They argue that the Court's prior opinion and order should be vacated based on newly discovered evidence, material misrepresentations by defendants, substantive legal errors by the Court in its prior opinion, and, pursuant to the catchall provision of Rule 60(b)(6), in the interests of justice. The motion will be denied.

Plaintiffs vigorously attack the defendants' factual submissions in response to their complaint, arguing that

"newly-discovered" evidence reveals numerous factual misstatements.[4] But plaintiffs' extensive discussion of Shi'ite beliefs, DOCS's practices vis-a-vis other religious groups, and discrimination against Shi'ite inmates by Sunni Muslim chaplains at various New York state prisons largely misses the point both of the plaintiffs' original complaint and of the Court's prior opinion. Whatever relevance these matters might have to the kind of broad-based attack on DOCS's Muslim program being conducted in the Northern District of New York, the plaintiffs here brought a simpler complaint, seeking very particular relief.

The crux of that complaint was that DOCS violated the Free Exercise and Equal Protection rights of Shi'ite Muslim inmates by failing to provide separate congregate religious services for them. (Amended Compl. ¶¶ 5A, 5G, 6; 10/5/01 Tr. at 16.[5]) The Court's holding that such services are not constitutionally required was primarily based on an analysis of DOCS's newly-implemented Muslim religious program (which was adopted in response to litigation in New York state court, *see Cancel v. Goord,* 717 N.Y.S.2d 778 (2d Dep't 2000)), under the standards of *Turner v. Safley,* 482 U.S. 78, 84–85, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987), as applied by the Second Circuit in *Farid v. Smith,* 850 F.2d 917, 926 (2d Cir.1988).

Plaintiffs' voluminous factual submission does not dispute that in August 2001, after this litigation was instituted, DOCS did indeed adopt a new Muslim program, as it represented to this Court that it had.[6] Nor does plaintiffs' attack on various aspects of defendants' factual submissions address any assertion that was essential to the reasoning in the Court's opinion. Indeed, the only factual statement in the opinion that appears to be challenged is the statement that "[i]t is undisputed that no ecclesiastical authority or religious text requires separate services for Shi'ites and Sunnis." 184 F.Supp.2d at 333. Plaintiffs now provide a variety of religious texts indicating that Shi'ites may not participate in communal prayers led by a non-Shi'ite (Pls. Mem. at 4–5 and sources cited therein), and point out correctly that plaintiff Pugh had alluded to one of these sources in support of plaintiffs' preliminary injunction motion (*id.* at 18).[7] But nothing in plaintiffs' submissions suggests that such attendance at such congregate prayers is required by their faith, or disputes the Court's conclusion that "Shi'ite inmates are afforded a meaningful opportunity to observe those traditions, rituals and beliefs that are required of them by their religious doctrine." 184 F.Supp.2d at 333–34. Moreover, the Court's ultimate conclusion was that, because the plaintiffs' claimed that "the program as administered under the Sunni chaplain at Fishkill significantly infringes upon their ability to worship freely," *id.* at 334, and because plaintiffs had sufficiently alleged that "the religious leader purportedly responsible for [their] spiritual guidance overtly despises the deeply held beliefs of inmates under his charge," *id .,* "the plaintiffs have successfully stated the second element of their claim" (infringement on their religious beliefs). The Court's decision thus turned not on whether Shi'ite doctrine permits Sunni and Shi'ite Muslims to worship together, but on the reasonableness of the justifications set forth by DOCS for refusing to provide separate opportunities for congregate worship, in the face of a sufficient allegation that the absence of such opportunities infringed plaintiffs' ability to practice their religion. This question was then analyzed as a matter of law. *Id.* at 335–37. To the extent plaintiffs challenge this analysis, their remedy is by appeal.

***2** Plaintiffs' remaining arguments may be disposed of more quickly. First, plaintiffs argue that the Court erred in failing to analyze their claims under the Establishment Clause or the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc–1 *et seq.* Neither of these claims was made in plaintiffs' complaint. While pro se complaints should be liberally construed, that pleading standard "is not without limits, and all normal rules of pleading are not absolutely suspended," *Gil v. Vogilano,* 131 F.Supp.2d 486, 491 (S.D.N.Y.2001). Even now, with the assistance of counsel, plaintiffs acknowledge that "winning the Establishment Clause argument will be difficult" (Pls. Reply Mem. at 8), and provide no analysis whatsoever of how the Establishment Clause would have entitled them to the relief that they requested, or how, in light of DOCS's new program specifically prohibiting the kind of anti-Shi'ite preaching by Sunni chaplains they cite as the basis of their Establishment Clause claim (Pls. Mem. at 21), they could present such a claim without the exhausting grievance procedures expressly provided by the program to address such behavior by chaplains. Plaintiffs' statutory argument, which invokes a statute whose applicability was never mentioned by any party to the case until the filing of the Rule 60 motion, ten weeks after the Court's decision was entered, is equally cursory.

Second, plaintiffs question the Court's refusal to consider claims turning on the specific behavior of the Muslim chaplain at Fishkill, absent the exhaustion of administrative remedies required by 42 U.S.C. § 1997e(a). (Pls. Mem. at 22–23.) It is undisputed that the anti-Shi'ite acts attributed by plaintiffs to this imam directly violate DOCS policy, which provides a specific grievance mechanism to address precisely these complaints. 184 F.Supp.2d at 335. While plaintiffs claim that these remedies would be unavailing, the Supreme Court has emphatically refused to "read futility or other exceptions into statutory exhaustion requirements where Congress has provided otherwise." *Booth v. Churner,* 532 U.S. 731, 741 n. 6, 121 S.Ct. 1819, 149 L.Ed.2d 958 (2001).

Finally, plaintiffs claim that defendants are collaterally estopped by the state courts' orders in *Cancel* from

litigating whether federal law requires the provision of separate congregational services for Shi‘ite Muslims. This claim is frivolous. The Appellate Division's decision in *Cancel* was based on state, not federal, law. *See Cancel v. Mazzuca,* No. 01 Civ. 3129(NRB), 205 F.Supp.2d 128, 137–38 (S.D.N.Y.2002) (denying collateral estoppel effect to *Cancel* in federal constitutional litigation). Moreover, the state trial court, in further proceedings in *Cancel,* has ruled that the Appellate Division did not actually "mandate separate religious services for the Shi‘a inmates" in any event. *See Cancel v. Goord,* No.1998/3828, slip op. at 5 (Sup.Ct. Dutchess Co. Mar. 14, 2002) (denying contempt motion by plaintiff). Plaintiffs dispute this reading, but to the extent plaintiffs claim that the decree in *Cancel* entitles them, as a matter of state law, to the very relief they seek here, their remedy lies with the Appellate Division.

***3** The essence of plaintiffs' argument, stripped of the effort to turn the case, long after its dismissal, into a broader attack on DOCS policies than they originally presented, is that this Court should have held a trial to determine whether DOCS's refusal to permit separate religious services for Shi‘ites "furthers some legitimate penological interest," *Farid,* 850 F.2d at 926, rather than evaluating the justifications offered by the State as a matter of law. That argument goes to the merits of the Court's legal analysis, and should be made to the Court of Appeals.

Accordingly, plaintiffs' motion to vacate the judgment pursuant to Rule 60(b) is denied.

SO ORDERED.

Footnotes

1 Plaintiff Errol Ennis has apparently been deported and has not joined in the present motion.

2 Although the Court's opinion was signed on December 28, 2001, due to the intervening holidays it apparently was not docketed until January 3, 2002.

3 Though this motion was technically filed pro se, it was prepared with the assistance of counsel, who has now entered an appearance as attorney of record for the plaintiffs.

4 Plaintiffs argue that evidence demonstrating material misrepresentations by an adverse party need not be "newly-discovered" to justify relief under Rule 60(b)(3). Defendants question whether the evidence submitted, which was for the most part developed in discovery during a long-running case in the Northern District of New York, *Orafan v. Rashid,* Dkt. No. 95–CV–318, qualifies as newly-discovered. For present purposes, the Court assumes that this evidence, while well-known to plaintiffs' new counsel, was unknown and largely unavailable to incarcerated pro se plaintiffs, and thus, to the extent it matters, is "newly-discovered" by them.

5 The Court conducted a hearing on the plaintiffs' request for a preliminary injunction on October 5, 2001. At that hearing, in response to the Court's effort to elicit exactly what relief plaintiffs sought, plaintiffs specified that they sought separate religious services, a separate prayer area, and a separate chaplain. (Tr. at 16.)

6 Plaintiffs do assert that, even since the adoption of the program, Sunni Muslim chaplains have violated the new DOCS policies, which prohibit chaplains from denigrating Shi‘ite beliefs. As noted below and in the Court's original opinion, however, such assertions of violations of DOCS policy should be pursued in the first instance through the grievance procedure that is part of the new policy.

7 It is not in fact clear that these authorities contradict the literal meaning of the Court's statement that there is no prohibition on attendance at worship with Sunni adherents. But in the context of the case, the substance of plaintiffs' point is that the Shi‘ite authorities cited require that Shi‘ite services be led by a Shi‘ite believer, and that attendance at services led by a Sunni imam is either prohibited or is, at the very least, without religious value to Shi‘ites.