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United States District Court,
D. Rhode Island.

Wesley SPRATT, Plaintiff, pro se
v.
A.T. WALL, Director, Rhode Island Department of Corrections, and the Rhode Island Department of Corrections, Defendants.

No. C.A.04–112 S. | Jan. 13, 2005.

Attorneys and Law Firms

Wesley Spratt, for Plaintiff, pro se.

Patricia Ann Coyne–Fague, for Defendant.

Opinion

Report and Recommendation

HAGOPIAN, Magistrate J.

***1** Wesley Spratt ("Spratt" or "plaintiff"), *pro se,* an inmate legally incarcerated at the Rhode Island Department of Corrections, Cranston, Rhode Island, filed a Complaint pursuant to 42 U.S.C. § 1983 alleging a violation of his First and Fourteenth Amendment rights. Plaintiff also alleges a a violation of 42 U.S.C. § 2000cc. Spratt names as defendants the Rhode Island Department of Corrections and its Director, A.T.Wall.

Currently before the Court are the motions of the plaintiff and defendant Wall for summary judgment pursuant to Fed.R.Civ.P. 56(c). These matters have been referred to me pursuant to 28 U.S.C. § 636(b)(1)(B) for a report and recommendation. For the reasons that follow, I recommend plaintiff's motion for summary judgment be denied, and defendant Wall's motion for summary judgment granted on plaintiff's First and Fourteenth Amendment claims. I further recommend plaintiff's claim made under 42 U.S.C. § 2000cc be stayed pending the resolution of *Cutter v. Wilkinson,* 349 F.3d 257 (6th Cir.2004), *cert. granted* 125 S.Ct. 308 (Oct. 12, 2004)(No. 03–9877).

Undisputed Facts

The following are the undisputed facts gleaned from the parties submissions in this matter:

In March 1996, a state court jury convicted Wesley Spratt of murder and related offenses. *See State v. Spratt,* 742 A.2d 1194, 1196 (R.I.1999). The state court sentenced him to a term of imprisonment at the Rhode Island Department of Corrections, Adult Correctional Institutions("ACI"). *Id.* During the times relevant in the Complaint, plaintiff was and continues to be confined in the Maximum Security Unit at the ACI.

While housed in maximum security, Spratt began to preach and lead Christian religious services within that unit for other inmates, with the apparent knowledge of officials at the Department of Corrections. In October of 2003 correctional officers and defendant Wall ended this practice, forbidding Spratt from preaching at or leading religious services for other inmates. The defendant based this restriction on maintaining institutional security. Spratt may pray, participate, and communicate with other inmates during religious services, just as any other inmate. He simply may not lead or preach at religious services.

Spratt has brought suit pursuant to 42 U.S.C. § 1983 citing an infringement of the First and Fourteenth Amendments. Plaintiff also alleges a violation of Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc. Both plaintiff and defendant Wall have moved for summary judgment pursuant to Fed.R.Civ .P. 56(c).

Discussion

A. Summary Judgment Standard

Summary judgment's role in civil litigation is "to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." *Garside v. Osco Drug, Inc.,* 895 F.2d. 46, 50 (1st Cir.1990). Summary judgment can only be granted when "the pleadings, depositions, answers to interrogatories, and admissions of file, together with the affidavits, if any, show there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c).

***2** Rule 56 has a distinctive set of steps. When requesting summary judgment, the moving party must "put the ball in play, averring 'an absence of evidence to support a nonmoving party's case." ' *Garside,* 895 F.2d at 48 (quoting *Celotex v. Catrett,* 477 U.S. 317, 325 (1986)). The nonmovant then must document some factual

disagreement sufficient to deflect brevis disposition. Not every discrepancy in the proof is enough to forestall summary judgment; the disagreement must relate to some issue of material fact. *See Anderson v. Liberty Lobby Inc.,* 477 U.S. 242, 247–248 (1986).

On issues where the nonmovant bears the ultimate burden of proof, he must present definite, competent evidence to rebut the motion. *See id.* at 256–257. This evidence "can not be conjectural or problematic; it must have substance in the sense that it limns differing versions of the truth which a fact finder must resolve at an ensuing trial." *Mack v. Great Atl. & Pac. Tea Co.,* 871 F.2d 179, 181 (1st Cir.1989). Evidence that is merely colorable or is not significantly probative cannot deter summary judgment. *Anderson,* 477 U.S. at 256–257.

B. 42 U.S.C. § 1983

Plaintiff has brought suit under 42 U.S.C. § 1983. Section 1983 provides, in pertinent part:

> Every person who, under the color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

42 U.S.C. § 1983.

In order to maintain a section 1983 action, the conduct complained of must be committed by a "person" acting under color of state law and the conduct must have deprived the plaintiff of a constitutional right or a federal statutory right. *Gomez v. Toledo,* 446 U.S. 635, 640, (1980); *see also, Baker v. McCollan,* 443 U.S. 137 (1979) (constitutional deprivations); *Maine v. Thiboutot,* 448 U.S. 1 (1980) (statutory deprivations). Here, there is no dispute that defendant Wall acted under the color of state law. The only question presented is whether the uncontested facts demonstrate a violation of plaintiff's rights under the First and Fourteenth Amendments.

1. First Amendment Claims

Plaintiff first alleges claims under the First Amendment. There is no dispute that the defendant interfered with Spratt's exercise of his religion and interfered with his speech by forbidding him to preach at or lead inmate religious services. There is no dispute that Spratt may attend religious services, and pray and participate as any other inmate. There is also no dispute regarding the sincerity of Spratt's religious beliefs. The only issue at hand is whether the defendant may restrict Spratt from leading or preaching at religious services.

***3** The First Amendment, applicable to the states via the Fourteenth Amendment, *see Cantwell v. State of Connecticut,* 310 U.S. 296, 303 (1940), provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech...." *See* U .S. CONST. amend. I. Plaintiff's claims, if raised by the general public, would receive a strict scrutiny analysis; however, such claims made by an incarcerated individual are evaluated under a lesser standard of scrutiny in the context of a prison setting. *Turner v. Safley,* 482 U.S. 78, 81 (1987). Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system. *See O'Lone v. Estate of Shabazz,* 482 U.S. 342, 351–352 (1987)(finding that the Constitution does not require the prison to sacrifice legitimate penological objectives to satisfy an inmate's desire to exercise his religion so long as an inmate is not deprived of all forms of religious exercise). A prisoner only "retains those ... rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the correctional system." *Pell v. Procunier,* 417 U.S. 817, 822 (1974).

Prison regulations alleged to infringe a constitutional right are judged under a reasonableness test. *See Turner,* 482 U.S. at 81; *O'Lone,* 482 U.S. at 349. A regulation or restriction must have a logical connection to the legitimate governmental interests invoked to justify it. *Turner,* 482 U.S. at 89–90. That connection may not be so remote at to render the policy arbitrary or irrational. *Id.*

In *Turner,* the United States Supreme Court set forth four factors that courts should consider in determining whether a restriction is reasonable. *Id.* First, courts are to ask whether there a is a valid rational connection between the restriction and the interest justifying it. *Id.* Second, courts are to consider whether there is an alternative means available to the prisoner to exercise the right. *Id.* at 90. Third, courts are to examine whether an accommodation would have "a significant 'ripple effect" ' on the guards, other inmates, and prison resources. *Id.* Fourth, courts are to consider whether there is an alternative that fully accommodates the prisoner "at de minimis cost" to valid penological interests. *Id.* at 90–91.

Defendant asserts that the restriction is based on

maintaining institutional security. *See* Memorandum in Support of Defendant's Objection to Plaintiff's Motion for Summary Judgment and Defendant's Cross–Motion for Summary Judgment at 5, 6. The defendant contends that when inmates are given positions of authority, or perceived authority, other inmates' relation to the prison administration is not as clear. *Id.* The defendant explains that permitting the plaintiff to be in a position of authority, or perceived authority, creates an unsafe environment. *Id.* This, defendant says, justifies Spratt's restriction on preaching at or leading religions services. I agree. To permit an inmate to hold such a position where he or she is perceived as a leader could risk the safety and security of other inmates, correctional officers, and staff at the Department of Corrections. *See Johnson–Bey v. Lane* 863 F.2d 1308 (7th Cir.1988); *Benjamin v. Coughlin,* 905 F.2d 571, 577–578 (2nd Cir.1990); *Cooper v. Tard,* 855 F.2d 125, 129(3rd Cir.1988). Thus, I find that there is a rational connection between the restriction and legitimate governmental interest of maintaining institutional security.

***4** Next, courts are to consider whether there is an alternative means available to the prisoner to exercise the right. As any other inmate, Spratt can pray and participate in religious services at the prison. He simply may not lead or preach at religious services. Thus, Spratt has a means to exercise his First Amendment right to practice his religion and to speak during religious services as any other inmate would. Spratt "... need not be afforded his preferred means of practicing his religion as long as he is afforded sufficient means to do so," *Murphy v. Missouri Dept. of Corrections,* 372 F.3d 979 at 5, (8th Cir.2004), and he may communicate with other inmates at religious services through permitted inmate interactions.

The final two factors also support a conclusion that the restriction on Spratt is reasonable. A decision to permit Spratt to continue to preach at or lead religious services could increase demands on correctional officers and prison resources. It could also create a hierarchy, or perceived hierarchy, among inmates. Additionally, there appears to be no other alternatives that would further both Spratt's interest in preaching and leading religious services and the defendant's interest in maintaining security at a de minimis cost to valid penological interests.

Considering all of the factors of *Turner,* I find that the defendant's restriction on Spratt leading or preaching at Christian religious services entirely reasonable and rationally related to the legitimate government interest of maintaining institutional security. Spratt, as a legally incarcerated individual, has no First Amendment right to lead or preach at religious services held for inmates. A prison need not permit "convicted felons, frocked or unfrocked, to conduct religious services in the prison." *Johnson–Bey v. Lane,* 863 F.2d 1308, 1310 (7th Cir.1988).

Accordingly, I find that Spratt's motion for summary judgment should be denied, and the defendant's motion for summary judgment be granted on the plaintiff's First Amendment claims. I so recommend.

2. Fourteenth Amendment Claim.

In his Complaint, plaintiff also indicates that he is seeking redress for a Fourteenth Amendment violation. Plaintiff does not set forth an additional facts to support such a claim. Plaintiff's claims, as addressed above, are more appropriately analyzed under the First Amendment.

However, out an abundance of caution, this Court will add a further thought on a Fourteenth Amendment claim. To the extent that plaintiff may be claiming that preaching or leading religious services implicates some sort of "liberty" interest beyond the scope of his First Amendment claims, there is no indication that Spratt's restriction is "atypical" and "significant" in relation to the ordinary instances of prison life. *Sandin v. Connor,* 515 U.S. 472, 484 (1995). Therefore, I find that the undisputed facts fail to state a claim for a violation of the Fourteenth Amendment. Accordingly, I find that plaintiff's motion for summary judgment be denied, and defendant's granted on plaintiff's Fourteenth Amendment claims. I so recommend.

C. 42 U.S.C. § 2000cc

***5** In addition to the constitutional claims made pursuant to 42 U.S.C. § 1983, plaintiff asserts a claim under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc.[1] RLUIPA provides:

> No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, ..., unless the government demonstrates that imposition of the burden on that person -
>
> (1) is in furtherance of a compelling governmental interest; and
>
> (2) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc–1(a).

Congress enacted RLUIPA in response to the Supreme Court's ruling in *City of Boerne v. Flores,* 521 U.S. 507 (1997), declaring unconstitutional the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, as applied to the states. Although other courts have debated the constitutionality of RLUIPA, *see Madison v. Ritter,* 355

F.3d 310 (4th Cir.2003)(finding RLUIPA constitutional); *Charles v. Verhagen,* 348 F.3d 601 (7th Cir2003)(same); *Mayweathers v. Newland,* 314 F.3d 1062 (9th Cir.2002)(same); *But see Cutter v. Wilkinson,* 349 F.3d 257 (6th Cir.2003) (finding RLUIPA unconstitutional), defendant in this case has not made a constitutional challenge, nor has this circuit addressed the issue. However, the United States Supreme Court is about to weigh in on the matter. *See Cutter v. Wilkinson,* 349 F.3d 257, *cert. granted* 125 S.Ct. 308 (Oct. 12, 2004). Accordingly, I recommend that this claim be stayed until the Supreme Court has ruled on RLUIPA's constitutionality.

Conclusion

For the reasons set forth above, I recommend that plaintiff's motion for summary judgment be denied on his First and Fourteenth Amendment claims, and defendant's motion for summary judgment be granted on plaintiff's First and Fourteenth Amendment claims. Plaintiff's claims under RLUIPA should be stayed pending the resolution of *Cutter v. Wilkinson,* 349 F.3d 257, *cert. granted* 125 S.Ct. 308 (Oct. 12, 2004)(No.03–9877).

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of Court within ten days of its receipt. Fed.R.Civ.P. 72(b); Local Rule 32. Failure to file timely, specific objections to this report constitutes waiver of both the right to review by the district court and the right to appeal the district court's decision. *United States v. Valencia–Copete,* 792 F.2d 4 (1st Cir.1986)(per curiam); *Park Motor Mart, Inc. v. Ford Motor Co.,* 616 F.2d 603 (1st Cir.1980).

Footnotes

1 Plaintiff initially brought this claim pursuant to 42 U.S.C. Section 2000bb, the Religious Freedom Restoration Act. This Act has been declared unconstitutional by the U.S. Supreme Court, as applied to the states. *City of Boerne v. Flores,* 521 U.S. 507 (1997). Accordingly, plaintiff changed course and instead seeks relief under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc.