

United States District Court
Eastern District of Arkansas
Pine Bluff Division

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JUN 28 2011

Gregory Holt #129616
(Abdul Maalik Muhammad),
Plaintiff

Complaint
By: JAMES W. MCCORMACK, CLERK
DEP CLERK

Civil Action No.
5:11CV00164

BSM/JPV

vs.

Ray Hobbs, in his official
capacity as Director of The
Arkansas Department of Correction
and Gaylon Lay, in his official
capacity as Warden of the Cummins
Unit,

Defendants

This case assigned to District Judge Miller
and to Magistrate Judge Vope

I. Jurisdiction and Venue

- (1) This is a civil action authorized by 42 U.S.C. Section 2000cc to redress deprivation of his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The Court has jurisdiction under 28 U.S.C. Section 1331 and 1343(a)(3). Plaintiff's claims for injunctive relief are authorized by 28 U.S.C. Section 2283+2284 and Rule 65 of the Federal Rules of Civil Procedure.
- (2) The Eastern District of Arkansas, Pine Bluff Division is an appropriate venue under 28 U.S.C. Section 1391(b)(2) because it is where the events giving rise to the claim occurred.

II. Plaintiff's

(3) Plaintiff, Gregory Houston Holt (aka, Abdul Maalik Muhammad) is and was at all times mentioned herein a prisoner of the State of Arkansas in the custody of the Arkansas Department of Corrections. He is currently confined in the Cummins Unit, in Grady, Arkansas.

III. Defendants

- (4) Defendant, Ray Hobbs is the Director of the State of Arkansas Department of Corrections. He is legally responsible for the overall operation of the Department and each institution under its jurisdiction, including the Cummins Unit.
- (5) Defendant, Gaylon Lay, is the Warden of the Cummins Unit. He is legally responsible for the operations of Cummins Unit and for the welfare of all the inmates in that prison.
- (6) Each defendant is sued in his official capacity.

III(a). Facts

(7) Most of the facts in this case are described in detail in Plaintiff's Application For Preliminary Injunction and Temporary Restraining Order. The gist of it is this: The Arkansas Department of Correction has a grooming policy that requires all inmates, regardless of religious belief or practice, to shave

- with the only exception being that one (1) can wear a mustache that does not extend past the corners of the mouth. The reasons given for this policy is that inmates will not be able to hide weapons or contraband in facial hair.
- (8) Plaintiff is a devout, fundamentalist, Muslim who follows the Salaf and the Sunnah of the Prophet Muhammad (saws), in which it is stated that one (1) of the characteristics of al-fitrah (the natural way) is that one clip the mustaches short and leave the beard as it is (emphasis mine) [Sahih Al-Bukhari, Hadith 7/5893]
- (9) The Arkansas Department of Correction practices what is referred to as progressive disciplinary action. That is, once a disciplinary is given, if an inmate refuses to comply with an order to shave, he is given multiple disciplinaries, some as many as several in one day. Plaintiff has been subjected to these measures repeatedly until he shaved. He was warned as recently as June 9 that if he persisted in the growing of a $\frac{1}{2}$ inch beard that he would be subjected to those penalties yet again.
- (10) Plaintiff is not advocating the unrestricted growth of facial hair. The State does have a legitimate governmental interest in maintaining security for inmates and staff alike and in the staunching of the flow of contraband. Further, the Religious Land Use and Institutionalized Persons Act (RLUIPA) provides that the State must use the "least restrictive means" in allowing religious practice. A $\frac{1}{2}$ inch beard would serve that purpose. There is no legitimate reason why this would be a problem, in that it would be difficult, if not impossible, to hide weapons or contraband in a beard of that size. Further, case law exists that would buttress Plaintiff's claims. In Mayweathers vs. Terhune (328 F.Supp.2d 1086), the Ninth Circuit ruled that a $\frac{1}{2}$ inch beard would serve a legitimate governmental objective in being able to identify inmates in the event of an escape. In that case, the California Department of Corrections (CDC) argued that it was necessary to order inmates to shave so that should they escape, they could not alter their appearance by shaving beards. The Plaintiffs

in that case were devout Muslims who were subjected to progressive penalties for refusing to shave. The Court ruled that a 1/2 inch beard would satisfy the State's interests balanced with the inmates' right to practice their religion in the least restrictive means possible. This case is persuasive authority and should be applied in the instant case given that the facts are almost identical to each other in most respects.

- (11) A Declaration is attached to better inform the Court of the workings of the ADC on this matter, Exhibit "A"
- (12) Plaintiff would urge the Court to grant him a Temporary Restraining Order (TRO). In order to secure one, Plaintiff must show "irreparable injury, loss, or damage" in order to prevail on a Petition for a TRO. The "injury" does not have to mean physical damage to the body. (Lewis vs. Casey, 518 U.S. 343, 1996). Plaintiff only has to show that the injury would be ongoing and imminent. In this case, should Plaintiff not shave, he would be subjected to multiple disciplinarys, punitive isolation in a cell with temperatures daily in the high 90's, transfer to another penitentiary, and notations in his prison file that could affect ongoing appeals, clemency applications or future parole eligibility. In these respects, the harm is imminent and ongoing and the Court should therefore grant him a TRO.
- (13) Plaintiff would urge the Court to grant an injunction with no advance notice to the Defendants for the reasons stated in #12 and that Plaintiff would face retaliation and harassment.

IV. Exhaustion of Legal Remedies

- (14) Plaintiff, Gregory Holt, used the prisoner grievance procedure available at Cummins Unit to try and solve the problem. On 5-10-11, Plaintiff Gregory Holt, presented the facts relating to this complaint. On 5-25-11 or thereabouts, Plaintiff Gregory Holt was sent a response saying that the grievance had been denied. On 5-26-11, he appealed the denial of the grievance to the Chief Deputy Director of the ADC, Larry May. A response was sent back to Plaintiff informing him that a response would be sent by July 8, 2011. Plaintiff would move for an injunction prior to the final response for the reasons stated in #12 + #13. A court is authorized to protect

a Plaintiff and issue an injunction even if the administrative remedy process has not been exhausted, (Jackson vs. District of Columbia, 254 F.3d 262, 2001). Given the facts presented, Plaintiff is in need of this injunction without first exhausting all remedies, Exhibit "B"

- (15) As a final matter, Plaintiff is seeking In forma pauperis status. Plaintiff would ask this Court that he not be required to get verification from the financial officer of the institution due to the fact that should he do so, it would tip off the administration of his plans and would subject him to immediate retaliation.

V. Legal Claims

- (16) Plaintiff realleges and incorporates by reference Paragraphs 1-15.
- (17) The forcible shaving of the Plaintiff against his religious beliefs violated Plaintiff Gregory Holt's rights and constituted a chill on his rights of religious expression and belief and was not the least restrictive means available to him to practice that belief under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment to the United States' Constitution. Further, refusal to allow him to grow a 1/2 inch beard also violated his rights to free practice of religion under the Act listed.
- (18) The plaintiff has no plain, adequate or complete remedy at law to redress the wrongs described herein. Plaintiff has been and will continue to be irreparably injured by the conduct of the defendants unless this court grants the injunctive relief

VI. Prayer For Relief

(19) Wherefore, plaintiff respectfully prays that this court enter judgment granting plaintiff;

(a) A preliminary and permanent injunction ordering defendants Ray Hobbs and Gaylon Lay to cease enforcement of the current grooming policy, allow the growing of $\frac{1}{2}$ inch beards, cease the use of progressive punitive measures against those who grow the beard both pending and in the future, expungment of past disciplinary records against those who refused to shave and banning the transfer for non-disciplinary reasons those who seek redress in these matters.

(b) A jury trial on all issues triable by jury.

(c) Any additional relief this court deems just, proper, and equitable.

Respectfully submitted,
Gregory Holt
Gregory Holt #129616
Cummins Unit
P.O. Box 500
Grady, AR 71644-0500

Verification

I have read the foregoing complaint and hereby verify that the matters alleged therein are true, except as to matters alleged on information and belief, and, as to those, I believe them to be true. I certify under penalty of perjury that the foregoing is true and correct.

Executed at Grady, Arkansas on June 15, 2011.

Gregory Holt
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
Pine Bluff Division

Gregory Holt #129616
(AKA ABDUL MAALIK MUHAMMAD),
Plaintiff

Declaration of
Robert Hawk

V.S.

Civil Action No.

Ray Hobbs, in his official
Capacity as Director of
the ARKANSAS Department
of Corrections, et al.,
Defendants

Robert Hawk hereby declares:

I have been Incarcerated at the Cummins Unit since 2003. Since May 6, 2011 I have been in Barracks 14 Cell 430 with Gregory Holt, The Plaintiff.

On June 9, 2011 I observed Correctional Sgt Richardson of the ADC, Cummins Unit inform Gregory Holt that he needed to shave. Gregory Holt in turn informed Sgt Richardson that he had federal case law that supported his right to wear a 1/2 inch beard for religious purposes and further that he, Gregory Holt, had an Administrative Remedy pending in front of Larry May, the Chief Deputy Director of ADC. Sgt Richardson informed Gregory Holt that he, ~~Sgt~~ Richardson, would talk to Captain D.W. Tate, a Captain at the Cummins Unit about Gregory Holt's objections.

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ON June 14, 2011, Sgt. Richardson Refused to call and
Notified Gregory Holt that he, Sgt Richardson had discussed the
Matter with Captain Tate. Captain Tate had told Sgt Richardson
that if Gregory Holt did not shave, then Sgt Richardson was
to take disciplinary action against Gregory Holt. Also that
if Sgt Richardson did not write UD Gregory Holt then he Sgt
Richardson would receive disciplinary action. When Gregory
Holt informed Sgt Richardson that several "By the Book" [T's
and Sgt's had seen Gregory Holt's facial hair and said nothing
about it, Sgt Richardson stated to Mr. Holt that "they must
not have wanted to do any paperwork" Mr. Holt initially
Refused the order But then eventually Relented

IN MY EIGHT YEARS AT THE CUMMINS UNIT I HAVE SEEN
NUMEROUS INSTANCES OF PEOPLE REFUSING TO SHAVE BEING
PLACED IN PUNITIVE ISOLATION FOR THIS ACT. ALSO I HAVE
WITNESSED STAFF MEMBERS DENY INMATES CHOW CALL, LIBRARY,
VISITATION, RECREATION, AND OTHER SUCH ACTIVITIES DUE TO NOT
BEING CLEAN SHAVED.

I declare under penalty of perjury that the
foregoing is true and correct to the best of my knowledge.
Executed at Grady, ARKANSAS, ON JUNE 16, 2011.

Robert R Hawk
ADC. # 129886

6-16-11; Dated

IGTT405
3GT**ACKNOWLEDGEMENT OF GRIEVANCE APPEAL
or REJECTION OF APPEAL**TO: Inmate Holt, Gregory H.ADC #: 129616CFROM: May, Larry DTITLE: Chief Deputy DirectorRE: Receipt of Grievance CU-11-00966DATE: 06/01/2011

Please be advised, the appeal of your grievance dated
05/10/2011
was received in my office on this date 05/25/2011

You will receive communication from this office regarding this Grievance by 07/08/2011

- ☐ The time allowed for appeal has expired
- ☐ The matter is non-grievable and does not involve retaliation:
 - ☐ (a) Parole and/or Release matter
 - ☐ (b) Transfer
 - ☐ (c) Job Assignment unrelated to medical restriction
 - ☐ (d) Disciplinary matter
 - ☐ (e) Matter beyond the Department's control and/or matter of State/Federal law
 - ☐ (f) Involves an anticipated event
- ☐ You did not send all the proper Attachments:
 - ☐ (a) Unit Level Grievance Form (Attachment 1)
 - ☐ (b) Warden's/Center Supervisor's Decision (Attachment III); or Health Services Response Attached (Attachment IV for Health Issues Only)
 - ☐ (c) Did not give reason for disagreement with Response on Attachment III or IV
 - ☐ (d) Did not complete Attachment III or IV with your name, ADC#, and/or date
 - ☐ (e) Unsanitary form(s) or documents received
 - ☐ (f) Other