

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

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THOMAS S. VILE

CIVIL ACTION

v.

FILED

MAJOR JOSEPH WOOTTEN

NO. 90-7369

JUL 20 1993

MEMORANDUM AND ORDER

BECHTLE, J.

By

[Signature]
Dep. Clerk

JULY 20, 1993

Presently before the court is defendant Joseph Wootten's ("Wootten") motion for summary judgement. For the reasons stated below, the court will grant summary judgement in favor of Wootten and will dismiss plaintiff Thomas S. Vile's ("Vile") complaint. The court will also deny Vile's motion to proceed nunc pro tunc.

I. BACKGROUND

Vile, acting pro se, filed this civil rights suit pursuant to 42 U.S.C. § 1983, against Wootten, a former correctional officer at the Delaware County Prison ("DCP"), and a corporal at the time of the incident about which Vile complains. Vile alleges that Wootten violated his civil and constitutional rights guaranteed by the Free Exercise Clause of the First Amendment by denying him access to religious services while an inmate at DCP.¹

At all times relevant to Vile's complaint, he was an inmate on DCP's "D" Block, a maximum security cell block, whose residents are segregated from the remainder of the prison

1. Vile's complaint named several defendants, all of whom, with the exception of Major Joseph Wootten, were dismissed from this action by the court's Order dated December 12, 1990.

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population for reasons of prison safety and security. (Complaint ¶¶ 9 and 10.) While on D Block, Vile was placed on 22-hour-a-day lockdown ("lockdown") because he was a convicted first degree murderer awaiting sentencing, and in addition, had violated prison rules and regulations on at least 20 separate occasions, including, assault, destruction of property, and refusal to obey orders. (Walrath Aff. ¶ 9.)² Lockdown on D Block is the most severe restriction on inmates at DCP other than placement in the Behavioral Modification Unit ("BMU"). (Complaint ¶ 14.)

Catholic religious services ("Mass") are held on D Block every Tuesday from 2:00 p.m. until 2:30 p.m. (Complaint ¶ 8.) The Mass is held at one of the busiest periods of the prison day wherein prison resources are stretched to their thinnest. (Def's Mem. Supp. Summ. J. at 4.) While on lockdown, Vile was permitted to leave his cell for two hours daily ("out-of-cell-time") from 8:30 a.m. until 10:30 a.m., which was later changed to 6:30 p.m. until 8:30 p.m. (Complaint ¶ 7.) Vile alleges that he made repeated requests to Wootten for his out-of-cell-time to coincide with the Catholic Mass, but that Wootten continuously denied these requests. (Complaint ¶ 8.) Consequently, Vile presently alleges that he was unconstitutionally denied his right to free religious expression under the First Amendment.

2. Vile was also housed on occasion in the Behavioral Modification Unit ("BMU"), an isolation area reserved for inmates who have violated rules and regulations at DCP or who pose a security threat. (Complaint ¶¶ 9 and 11.) It does not appear from the complaint that Vile's allegations concerning the alleged deprivation of his First Amendment rights pertain to his confinement in the BMU.

On February 18, 1993, Wootten filed the present motion for summary judgement pursuant to Fed. R. of Civ. P. 56.³ In support of this motion, Wootten argues that in light of Vile's criminal record, any restrictions on Vile were for the sole purpose of carrying out DCP security policy which did not permit segregated inmates to mix with the general population or other D Block inmates at any time when prison safety was a concern. (Def's Mem. Supp. Summ. J. at 4.) However, Wootten argues that although Vile was in a segregated portion of DCP, he had ample opportunity to have significant religious contact. (Def's Mem. Supp. Summ. J. at 3.) Wootten states that Vile was permitted to attend the D Block Catholic Mass when not housed on 22-hour lockdown. According to Wootten, the restrictions placed on Vile which made him unable to attend the D Block Mass were due to his own disobediant conduct. Moreover, at all times relevant to Vile's complaint, he had the services of a priest or other clergyman available to him. (Def's Mem. Supp. Summ. J. at 3.)

II. STANDARD FOR SUMMARY JUDGEMENT

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

3. On December 18, 1992, Wootten filed a prior motion for summary judgement. By Order dated January 19, 1993, the court denied that motion, but granted Wootten leave to file another motion for summary judgement within 30 days of the date of entry of the Order, and required that the new motion present a record which would enable the court to analyze the constitutionality of Wootten's actions.

Whether a fact is material will be determined by reference to the "substantive evidentiary standards that apply to the case."

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Whether a genuine issue of material fact is presented will be determined by asking if "a reasonable jury could return a verdict for the non-moving party." Id. In deciding a motion for summary judgment, the court must consider the facts in the light most favorable to the non-moving party, and all reasonable inferences from the facts must be drawn in favor of that party as well.

Tigg Corp. v. Dow Corning Corp., 822 F.2d 358 (3rd Cir. 1987).

In order to defeat summary judgment, the non-moving party may not rest upon the vague and amorphous argument that the record somewhere contains facts sufficient to support his claims. Childers v. Joseph, 842 F.2d 689 (3rd Cir. 1988). Instead, the non-moving party is required to identify specifically the evidence of record which supports the claim and upon which a verdict in his favor may be based. Id. at 694-95. If the moving party succeeds in demonstrating that there are no genuine issues of material fact in dispute, the court must then be satisfied that the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317 (1986), cert. denied, 484 U.S. 1066 (1988).

III. DISCUSSION

Conflicts between prison regulations and religious services were examined by the Supreme Court in O'Lone v. Shabazz, 482 U.S. 342 (1987). The O'Lone court held that prison

regulations which conflict with religious services do not violate the Free Exercise Clause of the First Amendment if prison policies are reasonably related to legitimate penological interests such as security, order, and rehabilitation. O'Lone, 482 U.S. at 342-43. Factors the court must consider are whether there are alternative means of practicing religious faith available to the inmates, and the impact which accommodation of an inmates's asserted right would have on other inmates, prison staff, and prison resources generally. Id. at 351-52. The Supreme Court also noted that "it will not substitute its own judgment on difficult and sensitive matters of institutional administration for the determinations of those charged with the formidable task of operating a prison." Id. at 343.

O'Lone incorporated prior Supreme Court decisions which established that although convicted, prisoners do not forfeit all of their constitutional protections simply because of their conviction and imprisonment. Id. at 348 (citations omitted). However, the O'Lone court reiterated that lawful incarceration may also cause the necessary limitation or withdrawal of many privileges in the interest of penological objectives. Id. (citations omitted). Hence, the O'Lone court determined that prison regulations which are alleged to infringe upon the constitutional rights of inmates are valid only if they reasonably relate to legitimate penological interests. O'Lone, 482 U.S. at 349 (quoting Turner v. Safley, 482 U.S. 78 (1987)).

The present case is one in which DCP had a legitimate

penological interest concerning prison safety. In Vile's attached affidavit, he states that at no time during his incarceration at DCP was he housed at anyplace other than D Block or the BMU. (Def's Mem. Supp. Summ. J. Ex. A.) Vile also admits that he was on lockdown for most of the time that he was on D Block. (Def's Mem. Supp. Summ. J. Ex. C.) Placement within this level of security is necessary when an inmate is classified as high-risk due to the nature of his crime conviction. (Def's Mem. Supp. Summ. J. Ex. D.) Vile was admitted to DCP while he was awaiting sentencing for a first-degree murder conviction. Inmates convicted of such a crime are considered "high-risk" and should be segregated from the general prison population to maintain safety and order in the prison. (Walrath Aff. ¶¶ 8-10.) Consequently, justifiable restrictions were placed on Vile because he was a high-risk, segregated inmate, and, therefore, such restrictions were not in violation of his constitutional rights.

Wootten's affidavit states that DCP policy restricts inmates from D Block and the BMU from mixing with the general population of the prison for reasons of safety and security. (Wootten Aff. ¶¶ 4 and 5.) D Block inmates placed on lockdown could attend D Block Mass only if their out-of-cell-time coincided with that of services. However, DCP policy prohibited lockdown inmates from changing their out-of-cell-time simply to coincide with religious services. (Wootten Aff. ¶¶ 8 and 9.) Allowing Vile to change his out-of-cell-time would have created a

dangerous precedent for other high-risk inmates with similar requests, particularly in light of the fact that D Block Mass was held during one of the busiest periods during the prison day when DCP resources were the most limited. (Walrath Aff. ¶ 17.) In the opinion of deputy warden of DCP, Barbara Walrath, similar requests would be impossible to implement on an individual basis without creating a hazard to DCP security. (Walrath Aff. ¶ 19.)

Based on his criminal record, Vile had proven himself to be a danger to himself, other prisoners, and prison employees. (Walrath Aff. ¶ 10.) Keeping Vile from attending religious services with the general inmate population was vital to maintaining order at DCP. (Walrath Aff. ¶ 10.) Consequently, Vile was not permitted to change his out-of-cell-time to coincide with D Block Catholic Mass because to do so would have threatened overall prison security. (Walrath Aff. ¶ 16.) The court is unwilling to order that DCP policy be changed because it will not substitute its own judgment for those of experience in determining necessary limitations placed on inmates in order to secure DCP order and overall security.

Moreover, the record demonstrates that at all times during Vile's incarceration at DCP, he had the services of the prison chaplain or other clergyman available to him. The record indicates that Vile never requested a personal visit from the available clergyman, nor was such a request ever denied. (Wootten Aff. ¶ 11 and 13.) In light of the religious alternatives available to Vile, as well as the negative impact

that catering to Vile's request could have on maintaining prison security, the court finds that the record cannot support Vile's claim that Wootten's conduct infringed upon Vile's constitutional right to worship freely.

An appropriate Order will be entered.

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MICHAEL E. ADAMS, Clerk
By _____ ORDERerk

AND NOW, TO WIT, this day of July, 1993, upon
consideration of the motions presently before the court, IT IS
ORDERED as follows:

1. Defendant Joseph Wootten's unopposed motion for
summary judgment is granted. Judgment is entered in favor of
defendant Wootten and against plaintiff Thomas S. Vile; and
2. Plaintiff's motion to proceed nunc pro tunc is
denied.

7-21-93
CAB
P.P.
R. P. Adams
Legal



LOUIS C. BECHTLE, J.