

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JERRY CHARLES,

Plaintiff,

v.

DICK VERHAGEN and JON LITSCHER,

Defendants.

ORDER

01-C-253-C

Presently before the court is plaintiff's motion to modify the injunction entered previously in this case allowing plaintiff to possess a "reasonable quantity" of prayer oil in his cell. In response to the injunction, defendants adopted a policy allowing inmates to possess a one ounce plastic bottle of prayer oil in their cells. Plaintiff maintains that this quantity is unreasonable because a one ounce bottle lasts only two weeks and costs \$7.00. A significant portion of the \$7.00 figure is attributable to shipping and handling fees that must be paid on every order. For instance, it appears that a typical vendor charges \$4.00 in shipping fees on a one ounce bottle of prayer oil that sells for \$2.99. Plaintiff would prefer to order prayer oil in quantities greater than one ounce so as to avoid paying hefty shipping charges every two weeks. This would render the oil more affordable, particularly in light of

the meager pay plaintiff receives from his prison job. Although I am sympathetic to plaintiff's concerns, I cannot conclude that defendants' policy governing inmate access to prayer oil is unreasonable.

As defendants note, the Prison Litigation Reform Act "establishes standards for the entry and termination of prospective relief in civil actions challenging conditions at prison facilities." Miller v. French, 530 U.S. 327, 333 (2000). The Act provides that

[p]rospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

18 U.S.C. § 3626(a)(1)(A). Defendants note that they explored several options for making Islamic prayer oil accessible to inmates, including having the Department of Corrections order prayer oil in bulk so that corrections staff could package and distribute it or, alternatively, offering prayer oil for sale through prison canteens. These options were rejected because they imposed too great a burden on limited staff resources, did not take into account the varied business models of canteens at different institutions and carried the risk of aggrieving practitioners of different religions because other religious property items are not generally available at the canteens. Therefore, defendants chose to comply with the injunction by allowing inmates to order oil from an outside vendor. Although inmates were

allowed initially to order oil from only a single approved vendor, that restriction was lifted and inmates now have a choice of prayer oil vendors.

Plaintiff argues that the combination of defendants' one ounce quantity limit with the requisite frequent shipping charges renders prayer oil inordinately expensive, but defendants have articulated several justifications for the one ounce quantity limit. First, defendants note that one ounce bottles are a standard quantity available from a variety of vendors. In addition, prayer oil is extremely fragrant and in large quantities could mask the smell of impermissible items such as drugs and exacerbate allergies and respiratory problems in inmates and staff. Large quantities of prayer oil also raise concerns regarding inmates bartering and selling the oil to other inmates, activities that are impermissible under prison rules. On the basis of these factors, I am persuaded that the one ounce limit on the amount of oil an inmate may possess is a "reasonable quantity" for purposes of the injunction entered in this case.

It was defendants' refusal to allow plaintiff to possess *any* prayer oil in his cell that constituted a violation of the Religious Land Use and Institutionalized Persons Act. The violation of plaintiff's rights under the Act has been remedied by allowing him to possess some quantity of oil. Although plaintiff would like to possess greater quantities of oil, an order accommodating plaintiff's desire would extend "further than necessary to correct the violation of the Federal right" at issue in this case, in violation of the Prison Litigation

Reform Act. Id. Accordingly, plaintiff's motion to modify the injunction previously entered in this case is DENIED.

Entered this 19th day of December, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge