

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

DENNIS W. GONZALEZ,

Plaintiff,

v.

JON E. LITSCHER, GERALD BERGE
and TODD T. OVERBO,

Defendants.

ORDER

01-C-521-C

In an order dated September 20, 2002, I granted in part and denied in part defendants' motion for summary judgment. Plaintiff survived summary judgment on his claims that he was denied access to a medicine bag, ceremonial drums, feathers and a smoking pipe in violation of the First Amendment's free exercise clause. Those claims are now scheduled for trial. However, in the September 20 order I concluded also that defendants were shielded from plaintiff's claims for money damages by the doctrine of qualified immunity because it is not clearly established that Native American inmates held in high-security status are entitled by the First Amendment to possess a medicine bag, ceremonial drums, feathers or a smoking pipe. Now plaintiff has filed a document titled "Motion to Reconsider for Money Damages" in which he asks the court to

reconsider its decision on qualified immunity.

Plaintiff argues that the right of Native American inmates to possess “religious artifacts [while] in segregation” status was clearly established at the time his First Amendment rights were allegedly violated. In support of his argument, plaintiff cites Standing Deer v. Carlson, 831 F.2d 1525 (9th Cir. 1987), but that case is inapposite. As an initial matter, Standing Deer involved Native American inmates’ rights under the free exercise clause to wear religious headbands in a prison dining hall. It did not involve inmates in segregated confinement or any of the religious articles involved in plaintiff’s case. Moreover, the plaintiff-inmates in Standing Deer *lost*, because the Court of Appeals for the Ninth Circuit concluded that the prison regulation prohibiting inmates from wearing headbands in the prison dining hall did not violate the free exercise rights of Native Americans. Id. at 1528-29. Plaintiff string cites a handful of dated district court opinions as well, but these cases are no more helpful to his argument.

Accordingly, IT IS ORDERED that plaintiff’s “Motion to Reconsider for Money Damages” is DENIED.

Entered this 21st day of October, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge