

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

MICHAEL A. GRINDEMANN,

Plaintiff,

v.

JON E. LITSCHER (Secretary of WI DOC),
JANE GAMBLE (Warden KMCI)

Defendants.

ORDER

02-C-0429-C

This is a civil action for injunctive relief brought pursuant to 42 U.S.C. § 1983. Plaintiff Michael A. Grindemann, who is currently an inmate at the Kettle Moraine Correctional Institution in Plymouth, Wisconsin, alleges that defendants have violated his First Amendment rights by denying him his Pentacle, a religious necklace. In addition, plaintiff has filed a “request for temporary restraint,” which I construe as a motion for preliminary injunction, asking this court to forbid his transfer to another penal institution.

Although plaintiff has paid the full filing fee (and thus is not proceeding in forma pauperis), his complaint must still be screened because he is a prisoner proceeding pro se. See 28 U.S.C. § 1915A. In addressing any pro se litigant’s complaint, the court must

construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 521 (1972). However, the prisoner's complaint must be dismissed if, even under a liberal construction, it is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks money damages from a defendant who is immune from such relief. See 42 U.S.C. § 1915e.

Because at this early stage of the proceedings plaintiff has stated a claim upon which relief can be granted, his request for leave to proceed as to his First Amendment claim will be granted. However, because plaintiff fails to show irreparable harm or likelihood of success on the merits, his motion for a preliminary injunction will be denied.

In his complaint and attachments, plaintiff makes the following material allegations of fact.

ALLEGATIONS OF FACT

Plaintiff Michael A. Grindemann is a inmate at the Kettle Moraine Correctional Institution in Plymouth, Wisconsin. Defendant Jon E. Litscher is the secretary of the Wisconsin Department of Corrections. Defendant Jane Gamble is the warden of the Kettle Moraine Correctional Institution.

Plaintiff is Wiccan. Because of "security concerns" and pursuant to policy or practice, defendants have denied plaintiff a Wiccan religious symbol, the Pentacle, on the ground that

the Pentacle has been “associated as a symbol used by unsanctioned groups within the department of corrections.” On appeal, the corrections complaint examiner stated that the “issue of the pentagram/pentacle and whether it should be allowed as personal religious property continues to be explored by the department.” (The corrections complaint examiner’s report does not indicate whether he affirmed or reversed the lower decision.)

The Pentacle is a piece of jewelry worn around the neck and represents the four ancient elements of life. It is similar in nature to the Rosary, which is worn by Catholics. Another Wisconsin prison, the Oshkosh Correctional Institution, does not consider the Pentacle to be gang-related.

Plaintiff fears that defendants will move him to another institution, rendering his lawsuit moot.

DISCUSSION

Plaintiff alleges that defendants have violated his First Amendment rights by denying him his Pentacle, a religious symbol used by members of the Wiccan faith. It is well settled that prisoners do not leave their First Amendment rights at the prison gates. See Al-Alamin v. Gramley, 926 F.2d 680, 686 (7th Cir. 1991); Caldwell v. Miller, 790 F.2d 589, 596 (7th Cir. 1986). However, following the Supreme Court’s decisions in Turner v. Safley, 482 U.S. 78 (1987), and O’Lone v. Estate of Shabazz, 482 U.S. 342 (1987), a prisoner’s free

exercise claims are analyzed on a rational basis standard. According to the Supreme Court, a “regulation must have a logical connection to legitimate governmental interests invoked to justify it.” O’Lone, 482 U.S. at 350. At this early stage of the proceedings, I am unable to determine whether defendants’ security concerns are rationally related to legitimate penological interests. Accordingly, plaintiff will be granted leave to proceed as to this claim.

In addition, plaintiff requests that this court issue a preliminary injunction forbidding his transfer to another penal institution. In order to obtain emergency injunctive relief, plaintiff must show that (1) he has no adequate remedy at law and will suffer irreparable harm if the relief is not granted; (2) the irreparable harm he would suffer outweighs the irreparable harm defendants would suffer from an injunction; (3) he has some likelihood of success on the merits; and (4) the injunction would not frustrate the public interest. Palmer v. City of Chicago, 755 F.2d 560, 576 (7th Cir. 1985). At the threshold, plaintiff must show some likelihood of success on the merits and that irreparable harm will result if the requested relief is denied. Plaintiff alleges that he “fears” defendants will transfer him to another institution in order to render this lawsuit moot. Such vague speculation neither indicates irreparable harm nor shows a likelihood of success on the merits. Accordingly, plaintiff’s motion for a preliminary injunction will be denied.

ORDER

IT IS ORDERED that

1. Having screened plaintiff Michael A. Grindemann's complaint pursuant to 28 U.S.C. § 1915A, I conclude that he may proceed against defendants Jon E. Litscher and Jane Gamble as to his claim that he was denied his Pentacle in violation of the First Amendment; and

2. Plaintiff's motion for a preliminary injunction is DENIED.

Entered this 19th day of August, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge