

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

ALGENONE WILLIAMS,

Plaintiff,

OPINION AND ORDER

v.

02-C-0070-C

LOMEN, KARNOPP, HEISZ,
and GEBHARD, in their individual/
personal and official capacities,

Defendants.

This is a civil action for monetary relief brought pursuant to 42 U.S.C. § 1983. Plaintiff Algenone Williams, an inmate at Wisconsin Secure Program Facility in Boscobel, Wisconsin, contends that defendants violated his First Amendment right to free exercise of religion by confiscating his religious books, his Holy Qur'an as well as five other Islamic-related books, Belief and Islam, The Sunni Path, Why Did They Become Muslims, Endless Bliss-First Fascicle and Endless Bliss-Second Fascicle.

Presently before the court is defendants' motion for summary judgment, which plaintiff did not oppose. Because (1) defendants did not "confiscate" plaintiff's books and (2) the prison's policy of limiting Level 3 inmates to seven books is reasonably related to

legitimate penological interests, defendants' motion for summary judgment will be granted. In addition, plaintiff's January 9, 2003 motion to reconsider the denial of his previous motion to reconsider will be denied.

From defendants' unopposed proposed findings of fact and from the record, I find the following facts material and undisputed.

UNDISPUTED FACTS

Plaintiff Algenone Williams is an inmate at the Wisconsin Secure Program Facility located in Boscobel, Wisconsin. Defendants Chad Lomen, Douglas Karnopp, Roy Heisz and Gene Gebhard are correctional officers at the prison. Defendant Gebhard is also a sergeant. The prison houses inmates serving long periods of disciplinary segregation.

At the time of the incident in question, plaintiff was a Level 3 inmate. At that level, an inmate is allowed to possess seven soft cover books in his cell at any given time. The total number of books includes any religious books. Each inmate receives a copy of the prison's handbook, which explains the book policy. Each inmate has his own property box that is located in the unit and can be used to store inmate property, including books in excess of the limit. All officers are allowed to place property in and retrieve property from an inmate's property box. An inmate can exchange books in his cell for books in his property box.

The prison uses a five-tier level system to encourage inmates to improve their conduct

by granting more privileges on each level, including the ability to possess an increased number of books. The progressive structure provides inmates with an incentive for rehabilitation by offering rewards for improved behavior.

On November 15, 2001, defendant Heisz and officer Stowell performed a random search of plaintiff's cell. Defendants Karnopp, Gebhard and Lomen did not search plaintiff's cell. Random cells searches are performed periodically in order to look for contraband and to insure the safety of inmates and correctional officers. After plaintiff's cell had been searched, defendants Lomen and Karnopp took plaintiff back to his cell, where they found nine books stacked outside plaintiff's cell door. Defendant Lomen asked plaintiff which of the books he wanted to keep in his cell. Plaintiff said that he wanted to keep all of the books. Defendant Lomen explained that he was allowed only seven books, including any religious books. Plaintiff refused to listen and became uncooperative and argumentative.

When it became apparent that plaintiff would not select seven books, defendant Lomen advised plaintiff that pursuant to standard practice all of plaintiff's books would be placed in the property box. (Leaving the books stacked outside plaintiff's cell would violate policy and pose a safety hazard.) Defendant Lomen advised plaintiff that he should make a list of the seven books he wanted in his cell and give the list to an officer in order to retrieve those books.

Plaintiff wrote in his inmate complaint that he "clearly explained" to the officers that

“religious texts did not count as part of the (7) personal soft cover books allowed per the Level (3) Handbook.”

OPINION

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). This does not mean, however, that prisoners’ First Amendment rights receive the same deference as those of non-prisoners. 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), courts must analyze prisoners’ free exercise claims on a rational basis standard, rather than on the strict scrutiny standard accorded to non-prisoners’ First Amendment rights. According to the Supreme Court, a “rational basis” means that a “regulation [affecting a person’s ability to practice his religion] must have a logical connection to legitimate governmental interests invoked to justify it.” O’Lone, 482 U.S. at 350.

Plaintiff alleges in his complaint that defendants “confiscated” his religious books and he contends that the confiscation left him unable to practice his religion. Although it seems apparent that the Holy Qur’an would qualify as a religious book, plaintiff has failed to show that his other so-called “Islamic-related” books would affect his ability to practice his

religion. See id. at 349. In any event, petitioner's books were not "confiscated" but were placed in his property box because he refused to identify which seven books (the amount allowable) he wanted to keep in his cell and which two books (the amount in excess) he wanted to keep in his property box. In other words, plaintiff could have had the six books in question simply by including them in his list of seven books. Instead, because plaintiff could not have all nine books, he refused to select any books. This scenario can hardly be deemed a "confiscation" by defendants.

To the extent that plaintiff complains generally about the seven-book limit, this restriction does not give rise to a constitutional violation. See Weir v. Nix, 890 F. Supp. 769, 789 (S.D. Iowa 1995) (publication limitation did not impose substantial burden on plaintiffs' free exercise rights). Such a book restriction is reasonably related to the prison's legitimate penological interest of persuading inmates in disciplinary segregation to improve their conduct in order to receive additional privileges, including an increased allowance of books. A court may "not substitute [its] judgment for [prison officials'] 'in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations.'" Caldwell, 790 F.2d at 589 (quoting Pell v. Procunier, 417 U.S. 817, 827 (1974)). Although prisoners retain First Amendment rights while incarcerated, the exercise of such rights is limited by the fact of confinement and the needs of the penal institution. See Bell v. Wolfish, 441 U.S. 520, 545 (1979); Jones v. North

Carolina Prisoners' Labor Union, Inc., 433 U.S. 119, 125 (1977). Because defendant did not confiscate plaintiff's books and the seven-book limitation is reasonably related to legitimate penological interests, defendants' motion for summary judgment will be granted.

ORDER

IT IS ORDERED that

1. The motion for summary judgment by defendants Chad Lomen, Douglas Karnopp, Roy Heisz and Gene Gebhard is GRANTED;
2. Plaintiff Algenone Williams's January 9, 2003 motion to reconsider the denial of his previous motion to reconsider is DENIED; and
3. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 27th day of January, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge