

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

TROY S. BURTON,

Plaintiff,

v.

MATTHEW FRANK and
JEFFREY P. ENDICOTT,

Defendants.

OPINION AND
ORDER

03-C-0374-C

In this civil action for monetary, declaratory and injunctive relief, plaintiff Troy Burton claims that defendants Matthew Frank and Jeffrey Endicott violated his rights under the First Amendment when they denied his requests for a copy of The Satanic Bible while he was incarcerated in the Wisconsin state corrections facility. Plaintiff's claim for injunctive relief is moot because he has been released from prison since instituting this action. Kerr v. Farrey, 95 F.3d 472, 475 (7th Cir. 1996). Currently before the court are the parties' cross motions for summary judgment. Jurisdiction is present. 28 U.S.C. § 1331.

Defendants' motion will be granted; they have shown that inmate possession of The Satanic Bible poses a threat to a prison's legitimate interest in maintaining security and

promoting rehabilitation. I note at the outset that this case involves a narrow issue: whether there are legitimate penological reasons for banning The Satanic Bible. Although both parties make arguments regarding the Wisconsin Department of Corrections' wholesale ban on all Satanic literature and outward practices of Satanism, that ban is not before the court. In his complaint, the only injury plaintiff alleged that he suffered as a result of defendants' policy on Satanism was the denial of this single text. Thus, he lacks standing to challenge the policy more broadly. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (to demonstrate standing, plaintiff must allege facts showing injury that is concrete and particularized and actual or imminent, not conjectural or hypothetical).

From the parties' proposed findings of fact and the record, I find the following to be material and undisputed.

UNDISPUTED FACTS

Plaintiff Troy Burton is a Wisconsin state prisoner. He was incarcerated in the Redgranite Correctional Institution in Redgranite, Wisconsin from April 16, 2003, through October 22, 2003. Plaintiff has since been released from prison. Defendant Matthew Frank is Secretary of the Wisconsin Department of Corrections and defendant Jeffrey Endicott is the Warden of the Redgranite facility.

On or about April 28, 2003, plaintiff submitted a request to the facility's chaplain for

a copy of The Satanic Bible. The chaplain denied his request because inmates at the Redgranite facility are not allowed to have a copy of this particular text. The chaplain told plaintiff that Satanism was not an approved religion and that plaintiff would have to “change the ruling in Madison for it [Satanism] to come into this institution.”

According to the “Nine Satanic Statements,” which are contained on page 25 of Anton Szandor LeVey’s book, “Satan represents indulgence, instead of abstinence!” “Satan represents vengeance, instead of turning the other cheek!” “Satan represents man as just another animal, sometimes better, more often worse than those that walk on all-fours, who, because of his ‘divine spiritual and intellectual development,’ has become the most vicious animal of all!” and “Satan represents all of the so-called sins, as they all lead to physical, mental or emotional gratification!” LeVey states that right and wrong have long been inverted. The following are additional passages from The Satanic Bible:

The strongest instinct in every living thing is self-preservation, which brings us to the last of the seven deadly sins—anger. Is it not our instinct for self-preservation that is aroused when someone harms us, when we become angry enough to protect ourselves from further attack? A Satanist practices the motto, “If a man smite thee on one cheek, *smash* him on the other!” Let no wrong go unredressed. Be as a lion in the path—be dangerous even in defeat!

...

The only time a Satanist would perform a human sacrifice would be if it were to serve a two-fold purpose: that

being to release the magician's wrath in the throwing of a curse, and more important, to dispose of a totally obnoxious and deserving individual.

...

In the case of a curse or destruction ritual, it sometimes helps the magician if his desires are intensified by other members of the group. There is nothing in this type of ceremony which would lead to embarrassment on the part of those conducting a ritual of this sort, since anger and the symbolic destruction of the intended victim are the essential ingredients.

...

To insure the destruction of an enemy, you must destroy them by proxy! They must be shot, stabbed, sickened, burned, smashed, drowned, or rent in the most vividly convincing manner! It is easy to see why the religions of the right hand path frown upon the creation of "graven images." The imagery used by the sorcerer is a working mechanism for the material reality, which is totally opposed to esoteric spirituality.

Behold! The mighty voices of my vengeance smash the stillness of the air and stand as monoliths of wrath upon a plane of writhing serpents. I am become as a monstrous machine of annihilation to the festering fragments of the body of he who would detain me.

It repenteth me not that my summons doth ride upon the blasting winds which multiply the sting of my bitterness; And great black slimy shapes shall rise from brackish pits and vomit forth their pestilence into his puny brain.

I call upon the messengers of doom to slash with grim delight this victim I hath chosen. Silent is that voiceless bird that feeds upon the brain-pulp of him who hath tormented me and the agony of the is to be [sic] shall sustain itself in shrieks

of pain, only to serve as signals of warning to those who would resent my being.

The Wisconsin Department of Corrections has banned The Satanic Bible because it has determined that the book undermines the department's goal of rehabilitating inmates, among other reasons. Rehabilitation minimizes the societal cost of criminal recidivism. It is the position of the Wisconsin Department of Corrections that The Satanic Bible promotes violent and illegal behavior and that inmates adhering to the principles and values expressed in the book will be less likely to follow the rules of the institution as well as society. Manipulation, disregard for laws and authority, self-indulgence and revenge are inconsistent with criminal rehabilitation.

In the past, other Satanist inmates have kept spiritual notebooks called "books of shadows" that were filled with murderous language. At least one Satanist inmate engaged in a ritual in which an effigy was tortured and "murdered." The Satanic Bible outlines procedures for destroying enemies through the use of effigies.

The department has determined that The Satanic Bible presents a threat to the institutional safety of corrections facilities. It believes that possession of the book will encourage inmates to act violently and abusively toward staff and other inmates, particularly when prisons are overcrowded and a single act of violence can pose a significant threat. In addition, the department construes The Satanic Bible as advocating disregard for rules and

authority. Such disregard would jeopardize efficient and effective prison administration and require additional security and health services staff to enforce order and treat victims. Finally, the department of corrections is concerned that the safety of inmates openly practicing Satanism could be compromised if other inmates find them to be weird, socially unacceptable or threatening.

The Wisconsin Department of Corrections bans groups such as Aryan Nation, Aryan Circle, Aryan Brotherhood, Posse Comitatus, the Order and outlaw bikers because of its belief that they promote hate, supremacy and violence.

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). However, “lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system.” Pell v. Procunier, 417 U.S. 817, 822 (1973) (quoting Price v. Johnston, 334 U.S. 266, 285 (1948)). “[W]hile freedom to believe is absolute, the exercise of religion is not.” Childs v. Duckworth, 705 F.2d 915, 920 (7th Cir. 1983) (citing Connecticut v. Cantwell, 310 U.S. 296 (1940)). In the prison context, the courts have to balance inmates’ First Amendment rights prohibiting prison regulations that

burden an inmate's right to freely exercise the religion of his choosing while recognizing the prisons' need to implement and enforce regulations reasonably related to legitimate penological interests. O'Lone v. Estate of Shabazz, 482 U.S. 342, 349 (1987) (citing Turner v. Safley, 482 U.S. 78, 89 (1987)).

A. Legitimate Penological Interest

Defendants assert that The Satanic Bible is banned at Wisconsin corrections facilities because it threatens inmate rehabilitation and internal security. It is well established that rehabilitation and security are legitimate goals of the penal system. Id. at 920; O'Lone, 482 U.S. at 348 (security concerns are legitimate penological interests); Pell v. Procunier, 417 U.S. 817, 823 (1974) (“[a] paramount objective of the corrections system is the rehabilitation of those committed to its custody [and] . . . central to all other corrections goals is the institutional consideration of internal security within the corrections facilities themselves.”). Accordingly, the issue is whether the regulation is reasonably related to such objectives.

B. Reasonably Related

In undertaking the “reasonably related” inquiry, courts consider the following factors:

1. whether a valid, rational connection exists between

the regulation and a legitimate government interest behind the rule;

2. whether there are alternative means of exercising the right in question that remain available to prisoners;

3. the impact accommodation of the asserted constitutional right would have on guards and other inmates and on the allocation of prison resources; and

4. although the regulation need not satisfy a least restrictive alternative test, the existence of obvious, easy alternatives may be evidence that the regulation is not reasonable.

Al-Alamin v. Gramley, 926 F.2d 680, 685 (7th Cir. 1991) (quoting Williams v. Lane, 851 F.2d 867, 877 (7th Cir. 1988)) (quotation marks omitted). “In considering the appropriate balance of these factors . . . evaluation of penological objectives is committed to the considered judgment of prison administrators, ‘who are actually charged with and trained in the running of the particular institution under examination.’” O’Lone, 482 U.S. at 349 (quoting Bell v. Wolfish, 441 U.S. 520, 562 (1979)). The reasonably related standard is designed to “ensure[] the ability of corrections officials ‘to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration.’” Id. (quoting Turner, 482 U.S. at 89).

The asserted basis for the ban on The Satanic Bible is that many of its teachings are in direct contravention with ideas of criminal rehabilitation. The possibility that some inmates will adhere to the ideals it promotes poses a serious risk to both prison officials and other inmates. A disruptive group gang coordinator for the Wisconsin Department of

Corrections who has studied LeVey's work has characterized the book as promoting rejection of authority, self-gratification, vengeance, preying on the weak and violent rituals. These conclusions are well supported by the book's text. It advocates the murder of "totally obnoxious and deserving individuals," exaction of vengeance through violence, mutilation and murder of anyone a Satanist believes to be his enemy and annihilation of the "festering fragments of the body of *he who would detain me.*" (Emphasis added).

The text challenges its readers to rebel against the law of man and engage in symbolic acts of violence against one's enemies. Such violent behaviors are irreconcilable with the maintenance of prison safety and security. E.g., McCorkle v. Johnson, 881 F.2d 993, 995-96 (11th Cir. 1989) (practices and behaviors promoted in The Satanic Bible threaten prison security); Carpenter v. Wilkinson, 946 F. Supp. 522, 529 (N.D. Ohio 1996) (same). Moreover, the rejection of the law of man is antithetical to basic precepts of criminal rehabilitation.

Plaintiff contends that the violence advocated in The Satanic Bible is symbolic only. Even if I were to assume that this is clear from the text, but see Carpenter, 946 F. Supp. at 530 ("There is nothing in The Satanic Bible to suggest that these directives are not to be taken literally and it requires little imagination to project the probable result of espousing the philosophy promulgated in this publication."), symbolic acts of violence may pose a threat to prison security as well. Thornburgh v. Abbott, 490 U.S. 401, 412-13 (1989)

(“prisoners may observe particular material in the possession of a fellow prisoner, draw inferences about their fellow's beliefs, sexual orientation, or gang affiliations from that material, and cause disorder by acting accordingly”). For example, maintaining peace among inmates would be markedly more difficult if one prisoner were to engage in the symbolic torture, mutilation or murder of his fellow inmates.

Plaintiff relies on the easily distinguishable case of Howard v. United States, 864 F. Supp. 1019 (D. Colo. 1994). In Howard, the plaintiff requested certain items such as candles, incense, gongs and a black robe needed to perform Satanic rituals. The prison contended that these items presented a security risk because they could be used to start fires and disguise smells, sounds and identities. Although acknowledging these as legitimate concerns, the court rejected the argument because the prison had allowed other religious groups to use the same or almost the same items in their ceremonies. Id. at 1025. In this case, there is no evidence that the department of corrections would permit other texts advocating similar measures of violence and the rejection of authority. See Doty v. Lewis, 995 F. Supp. 1081, 1088 (D. Ariz. 1998) (distinguishing Howard where no evidence that prison’s security concerns were pretextual).

In Howard, the court rejected the concern that the ritual the plaintiff sought to perform would undermine rehabilitative goals after finding that plaintiff’s version of Satanism did not include the types of extreme violence that Satanists in other cases had

adopted. Id. at 1026. Although plaintiff argues that he adheres to a non-violent version of Satanism, he seeks access to a violent text. Conversely, the plaintiff in Howard sought permission to engage in a non-violent ritual. As noted above, plaintiff's only claim is that he is being denied a copy of The Satanic Bible; whether the state would violate his First Amendment rights by denying him less violent Satanic texts or the right to engage in non-violent Satanic rituals is not an issue in this case. I conclude that a valid, rational connection exists between defendant's decision to ban The Satanic Bible and the legitimate governmental interest in prison security and inmate rehabilitation.

_____ Defendants concede that plaintiff has no other means of practicing Satanism, but argue that although this second factor weighs in plaintiffs favor, it is not determinative. I agree. See Waterman v. Farmer, 183 F.3d 208, 213-14 (3d Cir. 1999) (four factors are unequal and tend to run together); Amatel v. Reno, 332 U.S. App. D.C. 191, 156 F.3d 192, 196 (D.C. Cir. 1998) (same). Plaintiff is free to believe whatever he wishes, Childs, 705 F.2d at 920, but his right to reinforce those beliefs must give way when doing so would pose a threat to safe and effective prison administration. O'Lone, 482 U.S. at 349.

The third consideration is the impact that accommodating plaintiff's religious exercise might have on other inmates and prison guards. Defendants believe that if an inmate reads The Satanic Bible, he will be more likely to behave in ways that would adversely affect other inmates, such as engaging in strong-arming and physical abuse. They note also that inmates

engaging in the types of behaviors advocated in the text create more work for guards, disciplinary staff and health services workers. On difficult issues of institutional administration, courts are to defer generally to the opinions and conclusions of prison administrators. Block v. Rutherford, 468 U.S. 576, 588 (1984). The conclusion that inmates are more likely to engage in activities and behaviors they read about is neither unreasonable nor unprecedented. E.g., Thornburgh, 490 U.S. at 412-13 (finding regulation of books describing construction or use of weapons, means of escape, manufacture of drugs, brewing of alcoholic beverages or other violent activities to be rationally related to legitimate penological interests because of threat posed to internal security).

Finally, courts are to consider any easy alternatives to the challenged regulation in determining whether it is reasonable. Plaintiff has not identified any alternatives that would not compromise the prison's interest in security, safety and administrative efficiency. In fact, plaintiff does not identify any alternatives at all. Where there are no obvious alternatives that would protect against disruptions to the peaceful and effective administration of the prison, it is less likely that the restriction is a pretext for religious discrimination.

In balancing these four factors, it is clear that the defendant's ban is reasonably related to the department of corrections' legitimate interest in maintaining peace, order and efficiency in the prisons and fostering criminal rehabilitation. This conclusion is consistent

with the holdings of other courts that have addressed this issue. McCorkle, 881 F.2d 993; Carpenter, 946 F. Supp. 522 (“[L]arge portions of The Satanic Bible have great potential for fomenting trouble of all kinds in a prison setting, leading to difficulty in maintaining security and order and in delivering rehabilitative services in the prisons.”). Accordingly, defendants’ motion will be granted and plaintiff’s will be denied.

ORDER

IT IS ORDERED that plaintiff Troy Burton’s motion for summary judgment is DENIED on his claim that defendants Matthew Frank and Jeffrey Endicott violated his First Amendment free exercise right when they denied him a copy of The Satanic Bible. Defendants’ cross motion for summary judgment is GRANTED. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 20th day of May, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge