

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

JAVIER R. SALGADO,

Plaintiff,

OPINION and ORDER

v.

06-C-598-C

GREGORY GRAMS, Warden; JANEL NICKEL,
Security Director; SEAN SALTER, Adm. Captain;
STEVE CASPERSON, Administrator; DAN
WESTFIELD, Security Chief; MATTHEW FRANK,
Secretary of D.O.C.,

Defendants.

In this civil action for declaratory, monetary and injunctive relief under 42 U.S.C. § 1983, plaintiff Javier Salgado, a prisoner at the Columbia Correctional Institution in Portage, Wisconsin, contends that defendant prison officials are violating his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment by prohibiting him from possessing prayer oil, prayer beads and a prayer rug in his prison cell.

Now before the court is defendants' motion for summary judgment. Although plaintiff was granted a two week extension of his deadline for opposing the motion, he has

not submitted any opposition brief. (Plaintiff sought an additional extension after the first one expired but I denied his request because he failed to explain why he needed more time.) Because it is undisputed that plaintiff never requested the accommodations defendants allegedly denied him, defendants' motion will be granted.

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

UNDISPUTED FACTS

A. Parties

Plaintiff Javier Salgado is a prisoner confined at Columbia Correctional Institution in Portage, Wisconsin. He is held in protective confinement status in the prison's disciplinary segregation unit.

Defendant Gregory Grams is Warden of Columbia Correctional Institution.

Defendant Janel Nickel is Security Director of the Columbia Correctional Institution.

Defendant Sean Salter was an administrative captain at the Columbia Correctional Institution until August 6, 2006, when he was appointed Security Director of the Stanley Correctional Institution in Stanley, Wisconsin.

Defendant Steven Casperson is the former administrator of the Wisconsin Department of Corrections' Division of Adult Institutions. He retired in November 2006.

Defendant Daniel Westfield is Security Chief of the Division of Adult Institutions.

Defendant Matt Frank is former Secretary of the Wisconsin Department of Corrections.

B. Protective Custody and Religious Property

On August 25, 2005, plaintiff was transferred from the Winnebago County jail to the Columbia Correctional Institution. At the time of his transfer, plaintiff was placed in protective custody status.

The Wisconsin Administrative Code allows a prison security director to place an prisoner in protective confinement if he is satisfied that the placement is necessary for the safety and welfare of the prisoner. Prisoners confined in protective custody are allowed no less than the privileges and property given to prisoners in program segregation. In addition, if prisoners in protective custody are confined in a less restrictive living unit, they may be offered whatever additional privileges are afforded other prisoners confined in the same unit.

The Columbia Correctional Institution houses protective custody prisoners in the prison's disciplinary segregation unit. Prisoners in that unit are allowed to possess only approved religious property items associated with their designated religious preference, with the exception of religious publications. Prisoners are required to designate their religious preference by filling out a religious preference form.

Plaintiff did not complete a religious preference form upon his arrival at the Columbia Correctional Institution. Almost one year later, on August 17, 2006, plaintiff completed a form identifying himself a Muslim.

Prison policy permits Muslim inmates confined in disciplinary segregation to possess oil for religious purposes (one of four fragrances) and a prayer rug. Prisoners may have pastoral visits and may obtain religious books from the prison chapel's library. In April 2007, the Wisconsin Department of Corrections amended its religious property policy to allow prisoners in segregation also to possess rosaries and other prayer beads.

Prior to filing this lawsuit, plaintiff never requested prayer oil, a prayer rug or prayer beads from any defendant named in this lawsuit. Moreover, although he asked to celebrate Ramadan in 2006, he has never written to the prison chaplain requesting any religious items.

DISCUSSION

Plaintiff's claims in this lawsuit arise under two separate laws: the First Amendment's free exercise clause and the Religious Land Use and Institutionalized Persons Act. Both are designed to safeguard the right to practice one's religion by limiting the government's ability to interfere with religious expression. Both laws require courts to apply a delicate balancing of prisoners' rights to freely express their faith with the prison officials' legitimate interest in running a prison. In this case, however, no balancing is required because plaintiff has

failed to show that defendants limited his right to free exercise.

When ruling on a motion for summary judgment, a court examines the record and determines whether, when viewed in the light most favorable to the nonmoving party, the facts supported by evidence lead inexorably to the conclusion that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). If the nonmoving party (in this case, plaintiff) fails to adduce evidence that, if believed, would establish the existence of any essential element on which he will bear the burden of proof at trial, the court must grant summary judgment to the moving party. Celotex, 477 U.S. at 322.

Plaintiff has not averred that he has a sincerely held belief in Islam. Because RLUIPA and the free exercise clause protect only those beliefs that are genuine, plaintiff's failure to put in evidence regarding his beliefs is reason enough to grant defendants' motion. However, even assuming that plaintiff is a true Muslim, his claims fail for a fundamental reason: he has not come forward with any evidence showing that defendants violated his rights.

In his complaint, plaintiff alleged that defendants denied him prayer oil, a prayer rug and prayer beads. Defendants concede that plaintiff did not possess these items; however, they offer a simple and persuasive explanation: plaintiff never asked for them. Unless defendants took action to impede plaintiff's exercise of his religious beliefs—and it is undisputed that they did not do so—they could not have violated his rights under the free

exercise clause or RLUIPA.

For this reason, defendants' motion will be granted.

ORDER

IT IS ORDERED that the motion for summary judgment of defendants Gregory Grams, Janel Nickel, Sean Salter, Steven Casperson, Daniel Westfield and Matt Frank is GRANTED. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 30th day of July, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge