

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

KARL ALEXANDER MEYER,

Petitioner,

OPINION and ORDER

v.

08-cv-278-bbc

WISCONSIN DEPARTMENT OF
CORRECTIONS,

Respondent.

In an order dated June 13, 2008, I stayed a decision whether petitioner Karl Alexander Meyer should be granted leave to proceed in forma pauperis on his RLUIPA claim against respondent Wisconsin Department of Corrections and gave him until June 27, 2008, in which to submit a supplement to his complaint to identify the nature of his religion, the item he was denied and how it relates to the exercise of his religion. On June 24, 2008, petitioner submitted the requested supplement. Having reviewed the complaint and supplement, I conclude that petitioner should be granted leave to proceed against respondent on his claim that respondent violated his rights under RLUIPA by refusing to allow him prayer beads for use in performing shamanic activities.

From petitioner's complaint and supplement, I draw the following allegations of fact.

ALLEGATIONS OF FACT

Petitioner Karl Alexander Meyer is an inmate at the New Lisbon Correctional Institution in New Lisbon, Wisconsin. Respondent Wisconsin Department of Corrections is the state agency operating Wisconsin's state prisons, including the New Lisbon Correctional Institution. Respondent Wisconsin Department of Corrections receives federal funding.

Petitioner practices the religion of shamanism, and is a "hereditary shaman." A shaman is believed to mediate between this material world and the spirit worlds for the good of the community, holding counsel with spirits to promote healing and successful hunting and performing other rituals. Shamans use prayer beads to maintain count of prayers, chants and meditations; perform healing rituals; connect with spirit helpers and guardians; and protect the shaman from evil spirits and energies. Without shaman beads, petitioner cannot hold council with spirit guides; maintain proper count of prayers, chants or meditations; perform healing or spiritual rituals; or defend from evil and "left hand" spirits and energies.

On February 15, 2007, petitioner filed a "Request for New Religious Practice (Property)" form in which he asked for rosewood "mala" or "prayer beads" to count his prayers, mantras and chants and help him with personal meditation and healing exercises.

At the time, petitioner's religion was listed under a "pagan umbrella group" but petitioner identified himself as a shamanist on the request form. On March 6, 2007, the chaplain recommended approval of petitioner's request after researching the issue. However, on March 27, 2007, the program director for the New Lisbon Correctional Institution recommended that petitioner's request be denied, explaining that the item was "non-essential" to the "Pagan Umbrella Group" and would interfere with the institution's ability to "keep religious property manageable." On April 17, 2007, an unknown person at respondent Wisconsin Department of Corrections approved the recommendation to deny for the same reasons. On May 2, 2007, Timothy Lundquist, warden of New Lisbon Correctional Institution denied the request.

On May 9, 2007, petitioner filed a grievance complaining about prison officials' denial of his request for religious property. His grievance was dismissed and he appealed the dismissal through the administrative chain to Rick Raemisch, acting secretary of respondent Wisconsin Department of Corrections. Raemisch adopted the reasoning of the inmate complaint examiner that "prayer beads are not listed as an essential religious item for the pagan religion" and upheld dismissal of petitioner's complaint.

OPINION

Under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA),

prisons receiving federal funds are prohibited from “impos[ing] a substantial burden on the religious exercise” of a prisoner unless the government can show that the burden imposed is the “least restrictive means” of furthering a “compelling governmental interest.” 42 U.S.C. §§ 2000cc-1(a). To state a claim under RLUIPA, a petitioner must allege facts tending to show “(1) that he seeks to engage in an exercise of religion, and (2) that the challenged practice substantially burdens that exercise of religion.” Koger v. Bryan, 523 F.3d 789, 796 (7th Cir. 2008) (citing 42 U.S.C. § 2000cc-2(b)). Under the statute, a “religious exercise” “includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” 42 U.S.C. § 2000cc-5(7)(A).

Although RLUIPA does not define the term “substantial burden,” the Court of Appeals for the Seventh Circuit has held that a substantial burden is “one that necessarily bears a direct, primary, and fundamental responsibility for rendering religious exercise . . . effectively impracticable.” Id. at 799 (citing Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 761 (7th Cir. 2003)). Courts should consider the likelihood that the challenged practice will cause a prisoner to “modify his behavior and violate his beliefs” when considering whether a practice renders a religious exercise “effectively impracticable.” Id. (citing Thomas v. Review Bd., 450 U.S. 707, 718 (1981) (in context of free exercise clause, government imposes substantial burden on person’s beliefs when it “put[s] substantial pressure on an adherent to modify his behavior and violate his beliefs.”)).

First, the facts alleged tend to show that petitioner seeks to engage in an exercise of religion. Petitioner has alleged that he practices shamanism, a religion focused on communicating with the spirit world, and he seeks to use prayer beads to perform certain activities related to that communication: holding council with spirit guides; maintaining proper count of prayers, chants or meditations; performing healing or spiritual rituals; and defending from evil and “left hand” spirits and energies. Second, petitioner has alleged that he cannot perform those activities without the prayer beads. Nevertheless, his request for the beads was denied upon recommendation by an official of respondent Department of Corrections and when he filed an inmate complaint seeking relief from that denial, the complaint was dismissed and the acting secretary of respondent Department of Corrections upheld dismissal, reasoning that prayer beads are not listed as an essential item in the pagan religion. Petitioner’s allegations suggest that by refusing to allow him to use prayer beads, respondent rendered certain shamanic activities “effectively impracticable” to petitioner, thus substantially burdening his religious exercise.

Practices that limit an inmate’s ability to freely practice his religion are not necessarily impermissible: an inmate may be denied religious accommodations if the denial is pursuant to “the least restrictive means of furthering a compelling governmental interest.” Koger, 523 F.3d at 796 (quoting Lovelace v. Lee, 472 F.3d 174, 186 (4th Cir.2006)); see also Cutter v. Wilkinson, 544 U.S. 709, 726 (2005) (suggesting that high standard of RLUIPA may be

met whenever prison denies accommodations that would be “excessive, impose unjustified burdens on other institutionalized persons, or jeopardize the effective functioning of an institution.”). However, at this stage in the proceedings, it is too early to tell whether respondent had legitimate reasons for denying petitioner the accommodations he requested. Because petitioner has alleged facts tending to show that respondent substantially burdened petitioner’s religious exercise by refusing to allow him prayer beads, petitioner will be granted leave to proceed on his claim that respondent violated his rights under RLUIPA.

ORDER

IT IS ORDERED that:

1. Petitioner Karl Alexander Meyer’s request for leave to proceed in forma pauperis is GRANTED on his claim against respondent Wisconsin Department of Corrections that it violated his rights under RLUIPA by denying him prayer beads he requested to practice shamanism.

2. For the remainder of this lawsuit, petitioner must send respondent a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondent, he should serve the lawyer directly rather than respondent. The court will disregard any documents submitted by petitioner unless petitioner shows on the court’s copy that he has sent a copy to respondent or to respondent’s attorney.

3. Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

4. Pursuant to an informal service agreement between the Attorney General and this court, copies of petitioner's complaint (dkt. #1), supplement (dkt. #6) and this order are being sent today to the Attorney General for service on respondent.

Entered this 3rd day of July, 2008.

BY THE COURT:

Handwritten signature of Barbara B. Crabb in cursive script.

BARBARA B. CRABB
District Judge