

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

MARK WALLS-SAWCHUK,

Petitioner,

ORDER

v.

02-C-0663-C

DICK VERHAGEN and
TOM LALIBERTE,

Respondents.

This is a proposed civil action for monetary and declaratory relief brought pursuant to 42 U.S.C. § 1983. Petitioner Mark Walls-Sawchuk, who is currently an inmate at the Oakhill Correctional Institution in Oregon, Wisconsin, alleges that respondents violated his First Amendment rights by denying him religious books written by or about Aleister Crowley. Petitioner has submitted the initial partial payment required under § 1915(b)(1).

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 petitioner's First Amendment claim is legally frivolous, he will be denied leave to proceed in forma pauperis.

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

ALLEGATIONS OF FACT

Petitioner is an inmate at the Oakhill Correctional Institution in Oregon, Wisconsin. Respondent Dick Verhagen is the warden and respondent Tom Laliberte is the administrative captain at Oakhill Correctional Institution.

On January 1, 2002, petitioner completed a DOC-1090 form in which he noted he is a member of the Wiccan faith and his religious community is the "O.T.O. Grand Lodge." Petitioner is specifically a member of the religion of Thelema, which is classified under the Wicca religion at most institutions outside the Department of Corrections. Aleister Crowley is the prophet in the Thelema faith.

On August 29, 2002, petitioner received a conduct report for possessing and obtaining Satanic material because he had books by or about Crowley, whom prison officials recognize as a Satanist. Petitioner had possessed these books since late 2000 or mid-2001 and they had been allowed at another institution.

On September 12, 2002, petitioner attended a disciplinary hearing with an advocate regarding his conduct report. At the hearing, petitioner was questioned as to his religious preferences and whether he knew that he had violated the rules. Petitioner admitted that he was aware that Crowley studied Satanism but stated that Crowley gave it up before he died. Petitioner was found guilty of group resistance, reprimanded and instructed to mail the books out of the prison in the presence of prison staff.

In a letter to respondent Laliberte dated September 3, 2002, petitioner wrote that Crowley was often accused of Satanism, but that Crowley never actually practiced or advocated Satanism.

Petitioner acknowledges that Satanism is disruptive to prison security and that it should be regulated by the prison.

DISCUSSION

Petitioner contends that respondents violated his First Amendment rights by denying him several allegedly religious books by or about Aleister Crowley (allegedly the prophet of his religion, Thelema), whom prison officials recognize as a Satanist. 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. 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).

Petitioner does not dispute that Satanism is disruptive to prison security and that it should be regulated by the prison. Rather, petitioner argues that because Crowley is not a Satanist, his writings should be allowed. Thus, the critical question is whether respondents acted reasonably in concluding that Crowley is a Satanist and thereby prohibiting his writings. Plaintiff’s own concession that Crowley studied Satanism and that Crowley is often accused of Satanism answers that question in the affirmative. Moreover, a quick search on the web reveals dozens of web sites linking Crowley with Satanism. Simply put, a court must defer to the rationale of prison officials in the absence of “substantial evidence in the record to indicate that the officials have exaggerated their response.” Caldwell v. Miller, 790 F.2d 589, 596 (7th Cir. 1986). Even if Crowley’s well-known association with Satanism were incorrect, the fact that it is the popular belief shows that prison officials have not exaggerated their response to Satanism by disallowing his works in the prison.

Accordingly, petitioner's request for leave to proceed will be denied as legally frivolous.

ORDER

IT IS ORDERED that

1. Petitioner Mark Walls-Sawchuk's request for leave to proceed in forma pauperis on his First Amendment claim is DENIED as legally frivolous;
2. The unpaid balance of petitioner's filing fee is \$141.88; this amount is to be paid in monthly payments according to 28 U.S.C. § 1915(b)(2) when the funds become available;
3. A strike will be issued against petitioner pursuant to 28 U.S.C. § 1915(g); and
4. The clerk of court is directed to enter judgment in favor of respondents and close this file.

Entered this 6th day of January, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge