IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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GARY ALLEN BORZYCH,

ORDER

Plaintiff,

04-C-632-C

v.

MATTHEW J. FRANK, STEVE CASPERSON, ANA M. BOATWRIGHT, GERALD BERGE, GARY BOUGHTON, PETER HUIBREGTSE, RICHARD RAEMISCH, SGT. JUDITH HUIBREGTSE, CPT. LEBBEUS BROWN, ELLEN RAY and TODD OVERBO,

Defendants.

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In this civil action brought under 42 U.S.C. § 1983, plaintiff Gary Allen Borzych claims that defendants Matthew Frank, Steve Casperson, Ana Boatwright, Gerald Berge, Gary Bourghton, Peter Huibregtse, Richard Raemisch, Judith Huibregtse, Lebbus Brown, Ellen Ray and Todd Overbo denied him copies of the books "The NPKA Book of Botar," "Tower of Wotan" and "Creed of Iron" in violation of his First Amendment right to freely exercise his religion, the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1, the First Amendment establishment clause and the Fourteenth Amendment's

equal protection clause. In an order dated February 8, 2005, I denied plaintiff's motion for a preliminary injunction. Now before the court is plaintiff's motion to reconsider this order. This motion will be denied.

Plaintiff raises three issues. First, he notes that both defendants and this court have been referring to his religion as Wotanism when it is in fact Odinism. The confusion likely derives from plaintiff's complaint in which he alleged that the two were synonymous. Cpt., dkt. #1, at 9, ¶ 39 ("Plaintiff is a sincere adherent to the Odinist Religion, also known as Asatru/Wotanism."); see also Lindell v. McCallum, 352 F.3d 1107, 1110 (7th Cir. 2003) (recognizing Odinism and Wotanism as synonymous). Nevertheless, I will refer to petitioner as an Odinist in the future. However, this is not a determination that Odinism and Wotanism are not one and the same. If it becomes relevant in a future motion, the parties may submit evidence on this issue.

Next, plaintiff contends that this court erred when it said that his current personal beliefs are not relevant to the reasonableness of defendants' concern that the text of the three books are at odds with certain legitimate penological objectives. He does not explain why but cites an inapposite passage from O'Bryan v. Bureau of Prisons, 349 F.3d 399, 401 (7th Cir. 2003). In O'Bryan, the court held that the district court had erred in dismissing a claim brought by a Wiccan under the Religious Freedom Restoration Act because defendants had failed to demonstrate that the casting of spells would cause problems in the prison setting.

The court noted that an inference that Wiccan spells would cause problems would have been premature because there was no reason to believe that their spells would be curses or hex-like given the Wiccan belief that adherents are not to harm others.

The present case is not analogous. As noted in the February 8 order, defendants submitted an affidavit containing extensive passages from the three texts plaintiff is seeking. Plaintiff's personal views do not change the words on the pages or provide a reason to believe that defendants' affiant misstated these passages. Furthermore, the fact that plaintiff does not currently adhere to certain problematic beliefs such as racial supremacy or justifiable violence against other races makes no less legitimate defendant's concern that plaintiff might be persuaded to act out the teachings of the texts he seeks if he were permitted to have them. In addition, materials advocating inter-racial violence "reasonably may be expected to circulate among prisoners" or cause problems if "prisoners [] observe [these] material[s] 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." Thornburgh v. Abbott, 490 U.S. 401, 412-13 (1989). Neither of these potential problems is mitigated by plaintiff's personal opinions. In short, plaintiff's personal beliefs are relevant to this case only with respect to the issue whether deprivation of the three texts impairs his ability to exercise his religion; they do not change what the texts say or whether defendants have a penological interest in banning them.

Finally, plaintiff revives his argument that defendants' expressed concerns about the content of the books he wants must be pretextual given that defendants allow other inmates to have copies of the Bible or the Koran, which according to plaintiff also advocate racism, hatred and violence. As noted in the February 8 order, plaintiff's argument appears to be framed around the holding of the district court for the District of Colorado in Howard v. United States, 864 F. Supp. 1019 (D. Colo. 1994). In that case, prison officials had rejected the plaintiff's request for certain items such as candles, incense, gongs and a black robe for use in performing Satanic rituals. Although acknowledging that the prison officials had a legitimate interest in preventing fires and limiting inmates' ability to disguise smells, sounds and identities, the court rejected the prison official's argument because the prison had allowed other religious groups to use the same items in their ceremonies. Id. at 1025. First, because this is a holding of another district court, it is not binding on this court. More to the point, the reasoning underlying the court's holding will rarely if ever be applicable in evaluating a prison's ban on literature because two texts will rarely if ever be identical or nearly so.

In considering the threat posed by a text, it is appropriate to consider whether antisocial behavior is advocated expressly or whether such an interpretation may derived only by implication, how pervasive such passages are, how forceful or graphic the wording is, whether there are mitigating passages, etc. Prison officials are entitled to considerable

deference in making these types of determinations. Pell v. Procunier, 417 U.S. 817, 827 (1974). The isolated and out of context quotes plaintiff has submitted from the Bible and the Koran, the bulk of which describe rather than advocate violence, do not convince me that it is probable that defendants acted so unreasonably in drawing a distinction between these books and those plaintiff seeks that he should be entitled to the extraordinary remedy of a preliminary injunction. Cf. Lindell v. McCaughtry, 115 Fed. Appx. 872, 879, 2004 WL 2278741, at *6 (7th Cir. 2004) (prison official did not act unreasonably or inconsistently "in finding different implications for security between materials such as the Bible and the works of Nietzsche, and Pagan Revival"); Thornburgh v. Abbott, 490 U.S. 401, 417 n.15 (1988) (exercise of discretion in making individualized determinations is bound to result in seeming inconsistencies that are "not necessarily signs of arbitrariness or irrationality"). Accordingly, plaintiff's motion for reconsideration will be denied.

ORDER

IT IS ORDERED that plaintiff Gary Borzych's motion for reconsideration of the

order of February 8, 2005, denying his motion for preliminary injunction is DENIED.

Entered this 18th day of February, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge