

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

MARK DEWAYNE HOLLINS,

Petitioner,

v.

C/O GITZELLE, BRETT SUTTON,
GREG GRAMS, CHRISTINE
ALTHAUS and MARDELL PETRAS,¹

Respondents.

ORDER

08-cv-377-slc

Because Judge Shabaz is on a medical leave of absence from the court for an indeterminate period, the court is assigning 50% of its caseload automatically to Magistrate Judge Stephen Crocker. It is this court's expectation that the parties in a case assigned to the magistrate judge will give deliberate thought to providing consent for the magistrate judge to preside over all aspects of their case, so as to insure that all cases filed in the

¹In the caption of his complaint, petitioner listed Greg Ghras as a respondent and identified him as the warden of the Columbia Correctional Institution. I am aware from other litigation filed in this court against the warden of the Columbia Correctional Institution that the warden's name is spelled "Grams." Therefore, I have corrected the spelling in the caption of this order.

Western District of Wisconsin receive the attention they deserve in a timely manner. At this early date, consents to the magistrate judge's jurisdiction have not yet been filed by all the parties to this action. Therefore, for the sole purpose of issuing this order, I am assuming jurisdiction over the case.

This is a proposed civil action for monetary relief, brought under 42 U.S.C. § 1983 and 42 U.S.C. § 2000cc-1(a)(1)-(2). Petitioner Mark Dewayne Hollins, who is presently confined at the Columbia Correctional Institution in Portage, Wisconsin, asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner is unable to prepay the full fee for filing this lawsuit. Petitioner has paid the initial partial payment of \$3.72 required under § 1915(b)(1).

Because petitioner is a prisoner, his complaint must be screened pursuant to 28 U.S.C. § 1915(e)(2). In performing that screening, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, it must dismiss the complaint if, even under a liberal construction, it is legally frivolous or 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. 42 U.S.C. § 1915(e).

I conclude that petitioner has stated a claim against respondents Gitzelle and Petras for violation of his rights under the First Amendment free exercise clause and the Religious

Land Use and Institutionalized Persons Act. However, petitioner has failed to state a claim against respondents Sutton, Grams and Althaus because it cannot be inferred that they were involved in any violation of his rights.

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

A. Parties

Petitioner Mark Dewayne Hollins is currently a prisoner confined at the Columbia Correctional Institution in Portage, Wisconsin. In March 2008, petitioner was a prisoner confined at the Dodge Correctional Institution in Waupun, Wisconsin.

Respondent C/O Gitzelle is a correctional officer at the Dodge Correctional Institution. Respondents Greg Grams, Brett Sutton and Mardell Petras all work at the Columbia Correctional Institution. Grams is the warden, Sutton is the food manager and Petras is the program director. Respondent Christine Althaus is the head dietician for the Department of Corrections in Madison, Wisconsin.

B. Dodge Correctional Institution

At the time he entered intake housing unit 19 at the Dodge Correctional Institution, petitioner submitted a religious preference form acknowledging that he was a Muslim and

that he had been attending every Muslim service, including the Jumuah service that occurred on Fridays at 1:00 p.m. Petitioner was placed on the Jumuah list. All housing units receive a copy of the list every week.

At 8:30 a.m. on March 28, 2008, petitioner was moved from housing unit 6 to housing unit 22. Although respondent Gitzelle was in possession of the Jumuah list on March 28, he did not permit petitioner to attend the Jumuah service that day. Another prisoner informed respondent Gitzelle that petitioner should be permitted to attend the Jumuah service, but respondent refused to let petitioner attend the service every Friday while petitioner remained on unit 22.

C. Columbia Correctional Institution

In the three-month period petitioner was a prisoner at the Columbia Correctional Institution leading up to the day he filed his complaint in this court, he has not participated in any Muslim services or received any Halal meals. On June 24, 2008, petitioner filed an inmate complaint about these matters. The institution complaint examiner responded to petitioner's complaint by telling him he needed to "go through the chain of command." On June 27, 2008, petitioner contacted respondent Mardell Petras, the prison program services supervisor, to try to resolve his complaint informally. Petras apparently passed petitioner's complaint to Chaplain Campbell, who responded to petitioner by telling him that he was on

the Jumuah schedule and the list to receive four “Vegan” meals a week. According to petitioner, IMP 6B states that a Jumuah service will be provided for inmates when 1% of the population desiring the religious service or practice is met. Petitioner believes there are 150 prisoners classified as “medium/minimum” security at the Columbia Correctional Institution, at least ten of whom are Muslim. Nevertheless, no Jumuah services or Halal meals are being provided.

DISCUSSION

A. Free Exercise and RLUIPA Claims

Petitioner’s allegations raise possible claims under the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1. Both the First Amendment free exercise clause and RLUIPA offer inmates protection to exercise their religion. In order to succeed on his First Amendment or RLUIPA claims, petitioner will have the initial burden to show that his religious exercise was substantially burdened by his inability to attend religious services or receive meals in accordance with his religion’s dietary rules. Vision Church v. Village of Long Grove, 468 F.3d 975, 996-97 (7th Cir. 2006). A substantial burden is “one that necessarily bears a direct, primary, and fundamental responsibility for rendering religious exercise . . . effectively impracticable.” Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752, 761 (7th Cir. 2003).

If petitioner can show that preventing his attendance of Jumuah services and being denied Halal meals each substantially burdened his ability to practice his religion, respondents will have to prove that the deprivation was justified by a legitimate penological interest (or compelling interest, under RLUIPA). Borzych v. Frank, 439 F.3d 388 (7th Cir. 2006); Kaufman v. McCaughtry, 419 F.3d 678 (7th Cir. 2005); Tarpley v. Allen County, Indiana, 312 F.3d 895, 898 (7th Cir. 2002).

1. Dodge Correctional Institution

I understand petitioner to allege that his rights under the First Amendment free exercise clause and RLUIPA were violated because respondent Gitzelle refused to allow him to participate in Jumuah services while he was imprisoned in housing unit 22. Although petitioner does not say how long he was in unit 22, Gitzelle's alleged refusal to allow petitioner to participate in those services could have substantially burdened petitioner's ability to practice his religion. Therefore, petitioner will be granted leave to proceed on his claim that respondent Gitzelle violated his rights under the First Amendment and RLUIPA while petitioner was housed in unit 22.

2. Columbia Correctional Institution

It is unclear from petitioner's complaint and its attachments whether petitioner is

alleging that no Jumuah services are being provided at the Columbia Correctional Institution or that there are such services but that he has not been permitted to participate in them. The “Interview/Information Request” form attached to petitioner’s complaint shows that when he complained informally about not being able to attend Jumuah services, Chaplain Campbell responded that petitioner was “on the schedule for Jumah” and to receive four Vegan meals a week. (At this early stage, I will presume that a Vegan meal and a Halal meal are substantially similar.) However, in his complaint, petitioner states expressly that “there are no Jumah [sic] service for the medium/minimum inmates.” Construing petitioner’s complaint liberally, as I must, I will accept petitioner’s allegation that there are no such services available for him to attend.

Petitioner alleges that he contacted respondent Petras about the lack of any Jumuah services and about not receiving Halal meals despite the number of prisoners desiring such religious services and practices, in satisfaction of IMP 6B. He alleges that he never received a response from Petras; rather, he received a response from Chaplain Campbell, who appeared to be trying to accommodate petitioner’s religious preferences, although nothing more actually occurred. It is not at all clear whether petitioner contacted respondent Petras again when it became obvious that his requests were not being addressed despite Chaplain Campbell’s response. Nevertheless, because respondent Petras is the prison official responsible for insuring that petitioner was provided with prisoners’ religious practices, I will

assume at this early stage of the proceedings that respondent Petras did gain such knowledge and failed to take the required steps to cure the problem. Therefore, I will grant petitioner leave to proceed on his claim that respondent Petras deprived him of the ability to attend religious services and obtain religious meals in violation of the First Amendment's free exercise clause and RLUIPA.

Petitioner does not allege any facts about respondents Grams, Sutton or Althaus's personal involvement in the violation of any of his rights. In fact, he does not even mention these respondents in his allegations. It is well established that liability under § 1983 must be based on a respondent's personal involvement in the constitutional violation. Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995); Del Raine v. Williford, 32 F.3d 1024, 1047 (7th Cir. 1994); Morales v. Cadena, 825 F.2d 1095, 1101 (7th Cir. 1987). Nothing in petitioner's allegations allows an inference to be drawn that respondents Grams, Sutton or Althaus were involved in violating petitioner's religious rights or even that they were aware of any violations. Accordingly, petitioner fails to state a claim against these respondents and they will be dismissed from the case.

ORDER

IT IS ORDERED that:

1. Petitioner Mark Dewayne Hollins's request for leave to proceed in forma

pauperis is DENIED on his claim against respondents Greg Grams, Brett Sutton and Christine Althaus because he fails to state a claim that these respondents violated his rights under the First Amendment and RLUIPA.

2. Respondents Greg Grams, Brett Sutton and Christine Althaus are DISMISSED from this action.

3. A strike is recorded against petitioner for including in his lawsuit a claim that failed for one of the reasons listed in 28 U.S.C. § 1915(g).

4. Petitioner's request for leave to proceed in forma pauperis is GRANTED on his claim that respondents Gitzelle and Mardell Petras violated his rights under the First Amendment's free exercise clause and RLUIPA.

5. For the remainder of this lawsuit, petitioner must send respondents a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondents, he should serve the lawyer directly rather than respondents. 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

6. 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.

7. The unpaid balance of petitioner's filing fee is \$346.28; petitioner is obligated to pay this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2).

8. Pursuant to an informal service agreement between the Attorney General and this court, copies of petitioner's complaint and this order are being sent today to the Attorney General for service on respondents Petras and C/O Gitzelle.

Entered this 22nd day of July, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge