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

DEREK J. DEGROOT,

Plaintiff,

v.

OPINION and ORDER

WISCONSIN DEPARTMENT OF CORRECTIONS and MARIO CANZIANI,

21-cv-123-wmc[1]

Defendants.

Pro se plaintiff Derek J. DeGroot is incarcerated at Stanley Correctional Institution. He alleges that a Wisconsin Department of Corrections (DOC) policy requiring inmates to wear a face mask while outside of their cells to help stop the spread of the COVID-19 virus violates his religious rights. In a previous order, the court dismissed DeGroot's initial complaint and allowed him to amend his allegations. Dkt. 14.

DeGroot has submitted a proposed amended complaint and he seeks preliminary injunctive relief. Dkt. 17, 19, 20. In screening DeGroot's amended complaint, I must accept his allegations as true and construe the complaint generously, holding it to a less stringent standard than formal pleadings drafted by lawyers. *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011). With that standard in mind, I conclude that this case must be dismissed.

[1] I am exercising jurisdiction over this case for the purpose of this screening order only.

ALLEGATIONS OF FACT

DeGroot is a devout Christian who believes that wearing any face covering obstructs his breath and thus his relationship with God and "shows indirect favoritism towards Islam, a religion opposed to his." Dkt. 17 at 3. He also believes that his faith is enough to spare him any complications from COVID-19, and that the fatality rate of the virus has likely been inflated.

On July 21, 2020, the DOC began requiring all inmates to wear a face mask when indoors and outside of their cells in response to the COVID-19 pandemic. DeGroot refused to wear a mask based on his religious beliefs. He received a conduct report and was sent to segregation. Mario Canziani upheld the conduct report and affirmed the dismissal of DeGroot's inmate complaint asserting his faith-based objection to the masking requirement.

DeGroot wore a cloth mask as required after his release from segregation for as long as the mandate was in place. He became depressed because he was violating his religious beliefs. Wearing a mask also irritated DeGroot's pre-existing dermatitis and acne, causing sores and scarring despite treatment. DeGroot was denied a medical exemption from the masking requirement, and psychiatric services denied his requests for an appointment because he was not having thoughts of harming himself.

Most inmates at Stanley are vaccinated against the virus. While the masking requirement was in place, prison officials and inmates there would often remove their masks to speak to each other. Inmates were unable to wear their masks while eating together at the dayroom tables. Social distancing was also difficult. Due to staffing shortages, outside recreation was often closed. When inmates could go outside, Canziani enforced a "seating mandate" that prevented proper social distancing in the courtyard. Dkt. 17 at 8.

ANALYSIS

DeGroot contends that defendants violated his rights under the Free Exercise Clause of the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA) by requiring him to wear a mask when indoors and outside his cell over his faith-based objection.

As for DeGroot's Free Exercise Clause claims, prisoners generally retain their right to practice their religion, but prison officials may place restrictions on that right that are reasonably related to a legitimate penological interest. *See, e.g.*, *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987); *Neely-Bey Tarik-El v. Conley*, 912 F.3d 989, 1003 (7th Cir. 2019). This requires the court to consider four factors: (1) whether there is a "valid, rational connection" between the restriction and a legitimate governmental interest; (2) whether the prisoner retains alternatives for exercising the right; (3) the impact that accommodation of the right will have on prison administration; and (4) whether there are other ways that prison officials can achieve the same goals without encroaching on the right. *O'Lone*, 482 U.S. at 350–52. The court of appeals generally also requires the plaintiff to show that prison officials imposed a substantial burden on the prisoner's religious exercise.

RLUIPA gives inmates broader religious protection than the First Amendment. *Holt v. Hobbs*, 574 U.S. 352, 357 (2015). It prohibits prisons receiving federal funds from imposing a substantial burden on a prisoner's religious exercise unless the burden is the least restrictive means of furthering a compelling governmental interest. 42 U.S.C. § 2000cc-1(a)(1)–(2). In applying this statute, courts have placed the initial burden on the plaintiff to show that he has a sincere religious belief and that his religious exercise was substantially burdened. *Holt*, 574 U.S. at 361–62; *Koger v. Bryan*, 523 F.3d 789, 797–98 (7th Cir. 2008). If the plaintiff makes

his required showing, the burden shifts to the defendant to demonstrate that its actions further a compelling governmental interest by the least restrictive means. *Cutter v. Wilkinson*, 544 U.S. 709, 712 (2005). Although RLUIPA places a demanding burden on prisons, applying the compelling-interest test must account for the institution's need to maintain order and safety. *West v. Radtke*, 48 F.4th 836, 848 (7th Cir. 2022).

DeGroot cannot proceed under either theory. I accept that wearing a face mask violates DeGroot's sincere religious beliefs. But prison officials have a duty to ensure the health and safety of all inmates in their care. *Farmer v. Brennan*, 511 U.S. 825, 834–35 (1994). And preventing the spread of COVID-19 as the pandemic continues is a legitimate, compelling government interest. *See Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (per curiam) ("Stemming the spread of COVID-19 is unquestionably a compelling interest"). Other courts have held that masking requirements instituted in response to the ongoing pandemic are reasonably related to that interest. *E.g.*, *Denis v. Ige*, 538 F. Supp. 3d 1063, 1078 (D. Haw. 2021) (masking is "a rational measure designed to accomplish" the goal of protecting people from COVID-19); *Firszt v. Bresnahan*, Case No. 21-cv-6798, 2022 WL 138141, at *2 (N.D. Ill. Jan. 14, 2022) (public-school mask mandate "has a rational basis due to the severity of the COVID-19 pandemic and the need to prevent the spread of the disease"); *Oakes v. Collier Cnty.*, Case No. 20-cv-568-FTM-38NPM, 2021 WL 268387, at *3 (M.D. Fla. Jan. 27, 2021) ("It would be difficult to contend with a straight face that a mask requirement does not bear a rational relation to protecting people's health and preventing the spread of Covid-19").

DeGroot does not plausibly allege otherwise. He disputes the efficacy of cloth masks relative to other types of masks. He also contends that cloth masks are irritating, that it is not possible to wear masks during meals, that not everyone always wears a mask correctly, and that

there are additional means of preventing COVID-19. However, the Centers for Disease Control (CDC) advises that masking remains a critical public health tool for preventing spread of COVID-19, and "any mask is better than no mask."[2] DeGroot's allegations do not make it unreasonable for the DOC to adopt this potentially lifesaving, CDC-recommended measure to slow the spread of the virus in prison. *See Denis*, 538 F. Supp. 3d at 1078 ("a rule requiring individuals to wear face coverings while in public would be a sensible response" to any debate about the effectiveness of face masks); *Denis v. Ige*, 557 F. Supp. 3d 1083, 1094 (D. Haw. 2021) (it is reasonable to provide the public with "multiple layers of protection" in response to the pandemic); *cf. Prince v. Massachusetts*, 321 U.S. 158, 166–67 (1944) ("The right to practice religion freely does not include liberty to expose the community . . . to communicable disease").

Nor do DeGroot's allegations plausibly suggest that there is a less-restrictive means of protecting the community in prison where social distancing is at times impossible. Again, the policy requires DeGroot to mask while indoors and outside his cell whenever practicable. DeGroot alleges that he does not need to wear a mask if those around him are masked because "1 mask between 2 people (1 person masked, 1 person unmasked)" is sufficient. Dkt. 17 at 9. But that would mean the only exception DeGroot's prison could ever make to the masking requirement would be for DeGroot. *See Cutter*, 544 U.S. at 721 (a prison is "free to resist the imposition" if inmate requests for religious accommodations under RLUIPA "impose unjustified burdens on other institutionalized persons, or jeopardize the effective functioning of" the institution).

[2] Types of Masks and Respirators, https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/types-of-masks.html.

DeGroot has again failed to state a claim upon which relief can be granted under either a constitutional or statutory theory. So I will dismiss this lawsuit. *See Paul v. Marberry*, 658 F.3d 702, 705 (7th Cir. 2011) (where plaintiff fails to take the chance to amend the complaint to repair deficiencies, the lawsuit should be dismissed for failure to state a claim).

ORDER

IT IS ORDERED that:

1. Plaintiff Derek J. DeGroot is DENIED leave to proceed on any claims in this lawsuit, and this lawsuit is DISMISSED for failure to state a claim upon which relief can be granted.

2. Plaintiff's requests for preliminary injunctive relief, Dkt. 19, 20, are DENIED as moot.

3. The clerk of court is directed to record this dismissal as a "strike" against plaintiff under 28 U.S.C. § 1915(g) and to close this case.

Entered October 21, 2022.

BY THE COURT:

/s/

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JAMES D. PETERSON
District Judge