

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

LEROY A. LOVELACE,)	
)	
Plaintiff,)	Case No. 7:03CV00395
)	
v.)	OPINION AND ORDER
)	
JACK LEE, ET AL.,)	By: James P. Jones
)	Chief United States District Judge
Defendants.)	

Leroy A. Lovelace, Pro Se Plaintiff.

Plaintiff Leroy A. Lovelace has filed a “Motion to Supplement Pleadings” seeking to add a new claim and defendants. Upon review of the record, I will deny Lovelace’s request to supplement this action with this new claim and will direct that the pleading be conditionally filed instead as a separate civil action.

This case is before the court pursuant to a remand from the United States Court of Appeals for the Fourth Circuit. *Lovelace v. Lee*, 472 F.3d 174 (4th Cir. 2006). After the case was remanded and the parties filed supplemental pleadings, the Honorable Jackson L. Kiser, Senior United States District Judge, granted summary judgment as to all but one of plaintiff’s claims. The only claim remaining before the court at this time alleges that defendant K. Lester, a corrections officer at Keen Mountain Correctional Center, a state prison, violated Lovelace’s right to free

exercise of his religious beliefs during November 2002 by removing Lovelace from the list of inmates authorized to participate in Ramadan meals. In his Motion to Amend, Lovelace seeks to assert a claim that during Ramadan in November 2005, Keen Mountain officials refused to provide him with all three of his so-called common fare diet meals,¹ forcing him to choose between celebrating the Ramadan fast and receiving adequate nutrition and calories.²

It is firmly established that the mandate of a higher court is “controlling as to matters within its compass.” *Sprague v. Ticonic Nat’l Bank*, 307 U.S. 161, 168 (1939). Indeed, it is indisputable that a lower court generally is “bound to carry the mandate of the upper court into execution and [cannot] consider the questions which the mandate laid at rest.” *Id.* This doctrine also forecloses litigation of issues not

¹ Lovelace alleges that in keeping with Ramadan fasting principles, prison officials provided him his breakfast meal before dawn and his evening meal after sunset. His complaint is that he never received his lunch meal, which is the most substantial meal on the common fare diet menu. When he asked officials to provide him with both his lunch and dinner meals after sunset during Ramadan, officials refused.

² The defendant officials to the new claim are Kathleen Bassett, Warden; Mike Oslin, Food Service Director; and Larry Huffman, Western Regional Director of the Virginia Department of Corrections (“VDOC”). The new claim, like the remaining claims in the original action, is asserted under the First Amendment and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C.A. §§ 2000cc-1 through 2000cc-5 (West 2003). The new claim is also asserted under the Due Process Clause of the Fourteenth Amendment.

previously raised in the district court and so waived. *United States v. Bell*, 5 F.3d 64, 66 (4th Cir. 1993).

Lovelace's amended claim falls entirely outside the scope of the remand by the court of appeals. The new claim is based on events and policies in effect during Ramadan 2005, some three years after the events during Ramadan 2002 from which the original claims arose. Consideration of his new claim would thus require factual and legal analysis of entirely different evidence, a different version of Keen Mountain's Ramadan policy, and a different aspect of Lovelace's religious dietary needs and nutritional requirements. Lovelace cannot shoehorn this new claim into the narrow remand in this case.

Moreover, the new claim is barred under rules regarding joinder. Rule 18(a) of the Federal Rules of Civil Procedure, regarding joinder of claims in the same lawsuit, states that "[a] party asserting a claim to relief as an original claim . . . may join, either as independent or as alternate claims, as many claims . . . as the party has against an opposing party." Rule 20(a) allows a litigant to join defendants in the same lawsuit only when all the claims assert some right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences *and* some question of law or fact common to all defendants. *See, e.g., Rumbaugh v. Winifrede R.R.*, 331 F.2d 530, 537 (4th Cir. 1964). Rule 20 does not authorize a plaintiff to

“incorporate into an existing action a different action against different parties and presenting entirely different factual and legal issues.” *Trail Realty, Inc. v. Beckett*, 462 F.2d 396, 399-400 (10th Cir. 1972).

Lovelace’s amended claim does not satisfy the rules governing joinder. First, he seeks to add a new claim against parties that he did not name in the initial complaint, in violation of Rule 18.³ Indeed, the proposed amendment does not allege any claim against Officer Lester, the only defendant remaining before the court. Second, his new claim arises from different events and transactions involving different people and related to different prison policies and aspects of Lovelace’s religious practices. Therefore, the new claim fails under both prongs of Rule 20(a) and cannot be properly joined to the existing lawsuit against Officer Lester.

For the stated reasons, it is **ORDERED** that the Motion to Supplement Pleadings (Dkt. No. 89) is hereby DENIED, and the clerk shall remove this pleading and docket it conditionally as a new and separate civil action. If Lovelace wishes to pursue this new claim, he must prepay the \$350 filing fee for the new civil action or

³ Warden Bassett, the only party defendant in this case and in the amendment, became a party to the existing action only through defendants’ request that she be substituted to Lovelace’s claim for injunctive relief in place of Jack Lee, the former warden originally named in the suit. It is undisputed that Warden Bassett had no personal involvement in the alleged violations in 2002. Moreover, Judge Kiser previously granted Warden Bassett’s motion for summary judgment as to the injunctive claim against her.

comply with the requirements of 28 U.S.C.A. § 1915(b) (West 2006) by which he may qualify to pay the filing fee through installments from his inmate account.

ENTER: October 21, 2007

/s/ JAMES P. JONES
Chief United States District Judge