

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

MAURICE HAWKINS,
Plaintiff,

v.

DUNCAN M. MILLS,
Defendant.

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Case No. 7:05-CV-00216

By: Michael F. Urbanski
United States Magistrate Judge

REPORT AND RECOMMENDATION

Plaintiff Maurice Hawkins, a Virginia inmate currently proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff, currently housed at Red Onion State Prison (“Red Onion”), alleges that defendant violated his constitutional right to practice his religion by delaying approval for his request to participate in the Common Fare diet. Defendant is a member of the Central Classification Service (“CCS”) of the Virginia Department of Corrections.

Plaintiff has attempted to get the Common Fare diet twice within the past two years. In his first application for it, plaintiff stated that he was an adherent of the Siddha Yogi faith and required the Common Fare diet. When plaintiff was informed by prison authorities that the Common Fare diet was not a requirement for Siddha Yogi practitioners, plaintiff then claimed that he was a member of the Nation of Islam. In his initial application, the CCS deferred a decision on whether plaintiff should receive the diet pending plaintiff’s demonstration that he had adhered to the faith and its tenets for six months. The reason for this was to determine whether plaintiff’s Nation of Islam beliefs were “sincerely held.” During this six month period, plaintiff stopped celebrating Ramadan, ostensibly because a prison guard refused to give him his tray. As such, CCS officials eventually denied plaintiff the diet.

On plaintiff's second application for the diet, he stated that he had been in contact with the prison chaplain and had purchased items required for Nation of Islam practice and that he was trying to adhere to the faith. Although plaintiff was initially approved for the Common Fare diet, the CCS again deferred decision on plaintiff's request for nine months to determine whether plaintiff's beliefs were "sincerely held." As the CCS's decision appears to defer decision for a period of time to allow plaintiff to demonstrate continued adherence to the same religion for a period of time appears reasonable, it is the recommendation of the undersigned that defendant's motion for summary judgment be granted and this case dismissed and stricken from the active docket of the court.

I

Plaintiff states that his ability to practice his Nation of Islam religion was compromised by defendant's refusal to approve his request to receive the Common Fare diet. (Pl. Opp. Def.'s Mot. Summ. J. at 2.) Defendant allegedly did not approve the Common Fare diet for plaintiff because plaintiff did not complete Ramadan, another requirement of the Nation of Islam faith. Id. Plaintiff states that defendant's refusal to approve this diet for him has denied him his constitutional rights. Id. at 3.

Plaintiff originally filed an action under 42 U.S.C. § 1983 in Wise County Circuit Court. Id. at 4. As an exhibit to his response to defendant's motion to dismiss, plaintiff submits a copy of a December 24, 2004 Order from the Circuit Court of Wise County, Virginia. (See Pl. Opp. Def.'s Mot. Summ. J., Supp. 2, at 1-2.) The Order deals with the then-defendant Commonwealth of Virginia's motion to dismiss. The court held that:

[u]pon consideration whereof, the Court finds that if Petitioner intends his Complaint as an appeal of the Inmate Grievance

Procedure, this Court has no jurisdiction to consider such an appeal. If the Petitioner's Complaint is brought pursuant to 42 U.S.C. § 1983, the Court finds that the Commonwealth of Virginia is entitled to the defense of sovereign immunity. Further, if the Complaint is brought pursuant to the Virginia Tort Claims Act, the Court finds petitioner has failed to give prior notice as required by the Act. Finally, the Court finds that the deferral of Petitioner's consideration for the Common Fare Diet is reasonable to determine whether Petitioner's religious beliefs are sincerely held.

Therefore, it is ADJUDGED, ORDERED and DECREED that the Complaint be, and it hereby is, DISMISSED.

Id.

After this state court ruling, plaintiff filed this action complaining about the denial of his Common Fare diet. In support of his complaint, plaintiff has submitted an affidavit by a Jewish inmate, Charles R. Coates, who has been repeatedly refused Common Fare diet even though he watches videos about Judaism, reads the Torah, and attempts to follow an appropriate diet. (See Pl. Opp. Def.'s Mot. Summ. J., Supp. 3.) In his affidavit, inmate Coates opines that the system used by the CCS in which inmates are required to adhere to religious practices for six months in order to determine whether their religious beliefs are "sincerely held" does not allow inmates to eat their proper religious diet and is discriminatory. Id.

In his motion for summary judgment, defendant also attaches a copy of the Wise Circuit Court's judgment. Defendant Duncan Mills filed an affidavit in that action. There, he indicated that the Institutional Classification Authority considered plaintiff's request to participate in the Common Fare Diet on January 15, 2004 under the pretense that plaintiff was a member of the Siddha Yogi religion. (See Mills Aff. ¶ 7.) At that time, plaintiff's request for the Common Fare diet was denied because the diet was not required by that religion. Id. ¶¶ 8-10. By the time of plaintiff's hearing regarding his request, plaintiff indicated that he required the Common Fare

diet because it was required by his Nation of Islam faith. Id. ¶ 11. Plaintiff received preliminary approval to participate in the Common Fare diet, but when the prison warden forwarded his recommendation to the CCS, the CCS deferred action on this request stating that they would like to see six months of participation by plaintiff in religious activities, including Ramadan. Id. ¶ 14.

In a second affidavit provided with defendant's motion for summary judgment, Mills indicates that the Institutional Classification Authority ("ICA") again met to review plaintiff's request on January 13, 2005. (See Def. Mot. Summ. J., Mills Aff. ¶ 4.) Mills averred that plaintiff was present at the classification hearing and indicated that he had been in contact with the Chaplain at the prison and purchased religious material. Id. Mills indicated that plaintiff testified at the hearing that he had withdrawn from Ramadan because an officer had not given him his tray. Id.

Following this hearing, the ICA recommended that plaintiff's request for Common Fare diet be disapproved because he had withdrawn from Ramadan. Id. ¶ 5. On January 20, 2005, the prison warden approved this recommendation and it was forwarded to CCS for final approval. Id. ¶ 6. On February 23, 2005, CCS deferred action on this request, stating that they would like to see nine months of participation by plaintiff in religious services / programs / classes because plaintiff's behavior did not indicate sincere religious conviction. Id. ¶ 7. Mills states that CCS told plaintiff that he should reapply for participation in the Common Fare diet having completed Ramadan in 2005. Id. ¶ 7.

Defendant moves for summary judgment on a number of grounds. First, defendant indicates that Judge Ford C. Quillen of the Wise County Circuit court decided the issues

involved in this case with his decision – brought to the court’s attention by both parties here – dated December 21, 2004. Defendant notes that at that time Judge Quillen determined not only that there were a number of technical defects present in plaintiff’s case, but also that the deferral of plaintiff’s consideration for the Common Fare diet was a reasonable way to determine whether plaintiff’s religious beliefs were sincerely held. Because Judge Quillen reached these issues, defendant states that the doctrine of collateral estoppel bars the relitigation of their law and fact.

Further, defendant states that a review of plaintiff’s history shows that he apparently converted to the Nation of Islam faith more for the purpose of obtaining the Common Fare diet than because he holds a sincere belief. Defendant also asks this court to reach the merits of the same question ostensibly reached by Judge Quillen. Finally, defendant states that he is immune from suit in his official capacity because he, when acting in such capacity, is not a “person” under § 1983 and that he is entitled to qualified immunity because there is no allegation of conduct violating clearly established constitutional rights of which a reasonable person would have known.

As plaintiff has filed a response to defendant’s motion for summary judgment, this case is ripe for adjudication.

II

Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Federal Rule of Civil Procedure 56. Upon motion for summary judgment, the court must view the facts, and the inferences to be drawn from those facts, in the light most favorable to the party opposing the motion. United

States v. Diebold, Inc., 369 U.S. 654, 655 (1962). Rule 56(c) mandates entry of summary judgment against a party who “after adequate time for discovery and upon motion . . . fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” Celotex v. Catrett, 477 U.S. 317, 322 (1986). A genuine issue of material fact exists if a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986).

Ordinarily, a prisoner proceeding pro se in an action filed under § 1983 may rely on the detailed factual allegations in his verified pleadings in order to withstand a motion for summary judgment by the defendants that is supported by affidavits containing a conflicting version of the facts. Davis v. Zahradnick, 600 F.2d 458 (4th Cir. 1979). Thus, a pro se plaintiff’s failure to file an opposing affidavit is not always necessary to withstand summary judgment. While the court must construe factual allegations in the nonmoving party's favor and treat them as true, however, the court need not treat the complaint's legal conclusions as true. See, e.g., Estate Constr. Co. v. Miller & Smith Holding Co., 14 F.3d 213, 217-18 (4th Cir. 1994); Custer v. Sweeney, 89 F.3d 1156, 1163 (4th Cir. 1996) (court need not accept plaintiff's "unwarranted deductions," "footless conclusions of law," or "sweeping legal conclusions cast in the form of factual allegations") (internal quotations and citations omitted).

III

A. Collateral Estoppel.

It is the recommendation of the undersigned that defendant’s motion for summary judgment on the grounds of collateral estoppel be denied.

The doctrine of collateral estoppel or issue preclusion forecloses the re-litigation of issues of fact and law. See Sedlack v. Braswell Servs. Group, Inc., 134 F.3d 219, 224 (4th Cir. 1998). “To apply collateral estoppel or issue preclusion to an issue of fact, the proponent must demonstrate that (1) the issue of fact is identical to the one previously litigated; (2) the issue or fact was actually resolved in the prior proceeding; (3) the issue or fact was critical and necessary to judgment in the prior proceeding; (4) the judgment in the prior proceeding is final and valid; and (5) the party to be foreclosed by the prior resolution of the issue or fact had a full and fair opportunity to litigate the issue or fact in the prior proceeding.” In re Microsoft Corp. Antitrust Litig., 355 F.3d 322, 326 (4th Cir. 2004).

It does not appear that collateral estoppel is appropriate here because Judge Quillen’s conclusions as to the reasonableness of the determination were not necessary for his decision. In the Wise County decision, the Commonwealth of Virginia was the party being sued. Insofar as plaintiff’s suit there was under 42 U.S.C. § 1983, the Commonwealth was entitled to the defense of sovereign immunity; the Order appropriately notes as much. Once he made this decision, Judge Quillen never needed to make the further determination that the CCS’s method of determining whether plaintiff’s beliefs were sincerely held was reasonable. As such, his finding as to this matter was dicta and is not binding for this proceeding. See Restatement (Second) of Judgments, § 27, cmt. h (“If issues are determined but the judgment is not dependent upon the determinations, relitigation of those issues in a subsequent action between the parties is not precluded. Such determinations have the characteristics of dicta, and may not ordinarily be the subject of an appeal by the subject of an appeal by the party against whom they were made”) (cited approvingly in Microsoft, 355 F.3d at 326).

Further, the posture of the issue is now slightly different.¹ Before, when plaintiff initiated his request to receive the Common Fare diet, he claimed he was a member of the Siddha Yogi faith and switched to being a member of the Nation of Islam. This time when plaintiff initiated the grievance, he claimed he adhered to the Nation of Islam faith and that he had even purchased required articles for it. Plaintiff previously was told to wait six months before reapplying, and now he has been told to wait nine. While the ultimate fact at issue may be the same between the two cases – whether defendant’s method of determining whether plaintiff’s belief is sincere is reasonable – out of an abundance of caution, this court will consider the issue on the merits.

B. Deferral of Decision as a Means to Show “Sincere Belief.”

At its heart, plaintiff’s suit claims the CCS’s method of determining whether his belief is sincerely held – establishing that a person held to a particular faith for a prescribed period – is unreasonable. Here, the question is whether the CCS’s second decision – that the decision whether plaintiff should receive the Common Fare diet should be put off for nine months to see if he participates in religious activities including Ramadan – is reasonable.

The appropriate place to begin this inquiry is under section 3 of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), the successor statute to the Religious Freedom Restoration Act, 42 U.S.C., § 2000bb-2, which plaintiff mentions in his filings with the court. Section 3(a) of RLUIPA states that:

¹The Restatement (Second) of Judgments, § 27, cmt. c., notes that determining the dimensions of an issue that may be precluded is difficult and involves the balancing of important interests: “on one hand, a desire not to deprive a litigant of an adequate day in court; on the other hand, a desire to prevent repetitious litigation of what is essentially the same issue in dispute.” Both of these certainly come into play here.

no government shall impose a substantial burden on religious exercise of a person residing in or confined to an institution . . . even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person - (1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling government interest.

42 U.S.C. 2000cc-1(a). It is clear that this statute is applicable to the Virginia Department of Corrections. See Madison v. Riter, 355 F.3d 310, 314 (4th Cir. 2003).

RLUIPA defines religious exercise as “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” 42 U.S.C. 2000cc-5(7)(A). Thus, “the truth of a belief is not open to question, rather, the question is whether the objector’s beliefs are truly held.” Cutter v. Wilkinson, 125 S. Ct. 2113, 2124, n.13 (2005) (internal citation omitted). The question then becomes whether plaintiff’s beliefs are sincerely held. See Dehart v. Horn, 227 F.3d 47, 51 (3d Cir. 2000) (en banc) (stating that a court must determine as a threshold matter whether an inmate’s belief is “sincerely held” and “religious in nature”). The relevant case law in the free exercise area suggests that two threshold requirements must be met before particular beliefs are accorded first amendment protection. A court must decide whether the beliefs avowed are (1) sincerely held; and (2) religious in nature, in the claimant’s scheme of things. See United States v. Seeger, 380 U.S. 163, 185 (1965); Ephraim v. Angelone, 313 F. Supp. 2d 569, 578 (E.D. Va. 2003). The Supreme Court has emphasized that “while the ‘truth’ of a belief is not open to question, there remains the significant question of whether it is ‘truly held.’” Id.

If a prisoner's request for a particular diet is not the result of sincerely held religious beliefs, the First Amendment imposes no obligation on the prison to honor the request, and there is no need to conduct any further inquiry. See DeHart v. Horn, 227 F.3d 47, 52 (3d Cir. 2000). Here, the CCS questioned plaintiff's sincerity of his Nation of Islam beliefs because (a) he had claimed recently he was a member of the Siddha Yogi faith until he discovered that that faith could not get him access to his preferred diet; and (b) he did not participate in many of the major rituals – namely Ramadan – of his claimed faith. For these reasons, defendant, a member of CCS, asserts that it is reasonable to require plaintiff to do more to demonstrate that his religious belief is sincerely held.

Sincerity analysis seeks to determine an adherent's good faith in the expression of religious belief. See Int'l Soc'y for Krishna Consciousness v. Barber, 650 F.2d 430, 441 (2d Cir. 1981). The test provides a rational means of differentiating between those beliefs that are held as a matter of conscience and those that are animated by motives of deception and fraud. The latter variety, of course, must be subject to governmental scrutiny, lest our society abjure from distinguishing between the incantation of "sincerely held religious beliefs" as a talisman for self-indulgence or material gain and those beliefs genuinely dictated by conscience.

Whether religious beliefs are sincerely held is a question of fact. See Seeger, 380 U.S. at 185 (discussing the sincerity of religious beliefs for conscientious objector status); LaFevers v. Saffle, 936 F.2d 1117, 1118 (10th Cir. 1991). Sincerity analysis is exceedingly amorphous, requiring the factfinder to delve into the claimant's most veiled motivations and vigilantly separate the issue of sincerity from the factfinder's perception of the religious nature of the claimant's beliefs. See Patrick v. Le Fevre, 745 F.2d 153, 157 (2d Cir. 1984).

Given that the prison officials have made a factual determination – or more correctly, put off making a factual determination – the question is whether how they did so is reasonable. CCS’s method of determination here – forcing plaintiff to demonstrate that he has adhered to the key tenets of his faith for a moderate period of time – is reasonable. In Turner v. Safely, 482 U.S. 78, 89-90 (1987), the Court held that when a prison regulation impinges on inmates’ constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests. Id. This standard is intended to encourage deference to prison administrators and to avoid repetitive interference by federal courts in operational matters. Id. This notion was reinforced in the recent Supreme Court decision of Cutter v. Wilkinson, where the Court emphasized that courts were to defer to prison official’s expertise in running their facilities when faced with questions of inmate religious liberty. 125 S. Ct. 2113, 2124 (2005).

Applying Turner insomuch as one can in this determination, it is clear that the CCS’s deferral of decision was reasonable.² There is a rational connection between CCS’s desire to see plaintiff demonstrate participation in activities of the Nation of Islam before giving him its required diet. Looking to plaintiff’s longitudinal participation in services and Ramadan appears

²Although Turner does not deal with prison official’s determination that an inmate’s beliefs were not sincere, it does provide a certain amount of guidance for the inquiry. In Turner, the court held that several factors are relevant in determining the reasonableness of the regulation at issue. Id. at 89-90. First, there must be a valid rational connection between the prison regulation and the legitimate governmental interest put forward to justify it. Id. (internal quotation marks and citation omitted). Moreover, the governmental objective must be a legitimate and neutral one. Id. A second factor is whether there are alternative means of exercising the right that remain open to prison inmates. Id. at 90. Where other avenues are available for the exercise of the asserted right, courts should accord prison officials more deference in their judgment. Id. A third factor is the impact the accommodation the right would have on prison resources generally. Id. A fourth factor, the absence of ready alternatives, is evidence of the reasonableness of a prison regulation. Id.

to be the only way prison officials can determine whether his beliefs are sincere. Applying the third factor, allowing prisoners the Common Fare diet just on their professed belief in a religion requiring it, would, absent some showing of actual participation in the religion's activities, allow prisoners to choose their preferred diet through fraudulently claiming to adhere to a religion in which they do not actually believe. If prison administrators are not permitted to do this, then there is no way for them to apply any version of the "sincerely held" test in the prison context. See DeHart, 227 F.3d at 52. Not permitting prison administrators to require some minimal showing of sincerely held beliefs would compromise the ability of prison administrators to run their prisons effectively because they would have to blindly accept every request made by a prisoner espousing some religious reason. Applying the fourth factor, there appears to be no other way for prison officials to ascertain sincere belief without recourse to examination of a prisoner's religious conduct.

Under the logic of Turner, the CCS's decision to defer ruling on plaintiff's request to receive the Common Fare diet until he had demonstrated participation in his claimed religion appears both reasonable and appropriate. This decision accords with the well-established principle that prison administrators are to be accorded a degree of deference in making decisions governing the care of prisoners. See O'Lone v. Estate of Shabazz, 482 U.S. 342, 349 (1987). As such, it is the recommendation of the undersigned that defendant's motion for summary judgment be granted.

C. Qualified Immunity.

Defendant also is entitled to qualified immunity. Where constitutional issues are involved and an area of the law is unsettled, it is proper to examine whether officials are

protected by the doctrine of qualified immunity. When there are no genuine issues of fact, courts are encouraged to deal with qualified immunity defenses at the summary judgment stage so that officials might be spared the burdens of liability and litigation when appropriate. See Pritchett v. Alford, 973 F.2d 307, 313 (4th Cir. 1992) (citing Harlow v. Fitzgerald, 457 U.S. 800, 815-19 (1982)). When examining the issue of qualified immunity, a court must (a) identify the specific right allegedly violated; and (2) determine whether, at the time of the alleged violation, the right was so clearly established that a reasonable person in the official's position would have recognized the illegality of his actions. See id. at 312.

Here, the specific right at issue appears to be whether the CCS's method of determining whether an inmate's beliefs are sincerely held is reasonable. The court must address whether at the time of the alleged violation this right was so clearly established that a reasonable person in a prison official's position would recognize the illegality of their actions. In order to support a denial of qualified immunity, a court need not point to an already-litigated case involving the same or very similar facts. See Hope v. Pelzer, 536 U.S. 730, 741 (2002) (“[O]fficials can still be on notice that their conduct violates established law even in novel factual circumstances.”) Rather, the question for the court is whether the “contours” of the right have been fleshed out to a degree capable of giving an officer “fair warning” that the action he was preparing to take would violate the constitutional rights of prospective plaintiffs. See id.

When gauging the awareness of an official, a court should look to the decisions of the U.S. Supreme Court, the relevant U.S. Court of Appeals, and the highest state court of the state in which the court sits. Wilson v. Layne, 141 F.3d 111, 114 (4th Cir. 1998). Neither the Supreme Court, nor the Fourth Circuit, nor any Virginia state court has spoken regarding the issue of the

method prison officials should use to determine if an individual prisoner's religious beliefs are sincere. This provides support for the notion that defendant did not have the "fair warning" envisioned in Hope to the need to provide plaintiff the "Common Fare" diet given the factual allegations which cast suspicion on the sincerity of plaintiff's religious faith. As such, defendant is entitled to qualified immunity, and plaintiff's claim for monetary damages is dismissed.

IV

The Clerk is directed to immediately transmit the record in this case to the Honorable Glen E. Conrad, United States District Judge. Both sides are reminded that pursuant to Rule 72(b), they are entitled to note objections, if they have any, to this Report and Recommendation within ten (10) days hereof. Any adjudication of fact or conclusion of law rendered herein by the undersigned not specifically objected to within the period prescribed by law may become conclusive upon the parties. Failure to file specific objections pursuant to 28 U.S.C. § 636(b)(1) as to factual recitations or findings as well as to the conclusions reached by the undersigned may be construed by the reviewing court as a waiver of such objection.

Further, the Clerk is directed to send a certified copy of this Report and Recommendation to all counsel of record.

ENTER: This 1st day of August, 2005.

/s/ Michael F. Urbanski
United States Magistrate Judge