E-FILED
Tuesday, 04 September, 2018 09:38:05 AM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

WALTER THOMPSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No.: 16-2390-CSB**
	)	
	)	
TIMOTHY F. BUKOWSKI, *et al.*,	)	
	)	
Defendants.	)	

ORDER

COLIN S. BRUCE, U.S. District Judge:

This cause is before the Court on Defendants' motion for summary judgment. As explained further *supra*, Defendants are entitled to summary judgment because Plaintiff Walter Thompson has failed to identify a genuine issue of material fact that needs to be determined by the trier of fact, and Defendants have demonstrated that they are entitled to summary judgment on Thompson's First Amendment freedom of religion claim and on Thompson's claim under the Religious Land Use and Institutionalized Persons Act ("RLUIPA").

I.
MATERIAL FACTS

Plaintiff Walter Thompson has been incarcerated within the State of Illinois since 2012 on both state and federal charges. At various points during his incarceration, Thompson has been held at the Jerome Combs Detention Center ("JCDC") in Kankakee County, Illinois. Defendant Timothy Bukowski is the former Sheriff in Kankakee

County, Illinois. During the relevant time, Defendant Chad Kolitwenzew was the Chief of Corrections at the JCDC, and Defendant Robert Schultz was the Assistant Chief.

Thompson is a practicing Muslim. Thompson filed this suit under 42 U.S.C. § 1983 alleging that Defendants violated his right to practice his religion freely as protected by the First Amendment and by RLUIPA. Specifically, Thompson alleged that Defendants failed to find or to provide an Imam to lead prayer services while he was incarcerated at the JCDC. In addition, Thompson claimed that his copies of the *Final Call* magazine (an Islamic publication) were never delivered to him or were taken from him. In fact, Thompson averred that one copy of the magazine was removed from his cell during a shakedown. Finally, Thompson contends that Defendants favored the Christian religion over his by allowing volunteers to pass out free copies of the Bible to inmates who requested a copy.

Defendants have now moved for summary judgment on both Thompson's First Amendment and RLUIPA claims. Further facts will be included *infra* as necessary.

II.
STANDARDS GOVERNING SUMMARY JUDGMENT

Federal Rule of Civil Procedure 56(a) provides that summary judgment shall be granted if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a); *Ruiz-Rivera v. Moyer*, 70 F.3d 498, 500-01 (7th Cir. 1995). The moving party has the burden of providing proper documentary evidence to show the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Once the moving party has met its

burden, the opposing party must come forward with specific evidence, not mere allegations or denials of the pleadings, which demonstrates that there is a genuine issue for trial. *Gracia v. Volvo Europa Truck, N.V.*, 112 F.3d 291, 294 (7th Cir. 1997). "[A] party moving for summary judgment can prevail just by showing that the other party has no evidence on an issue on which that party has the burden of proof." *Brazinski v. Amoco Petroleum Additives Co.*, 6 F.3d 1176, 1183 (7th Cir. 1993). "As with any summary judgment motion, we review cross-motions for summary judgment construing all facts, and drawing all reasonable inferences from those facts, in favor of the nonmoving party." *Laskin v. Siegel*, 728 F.3d 7314, 734 (7th Cir. 2013)(internal quotation marks omitted).

Accordingly, the non-movant cannot rest on the pleadings alone, but must designate specific facts in affidavits, depositions, answers to interrogatories or admissions that establish that there is a genuine triable issue; he must do more than simply show that there is some metaphysical doubt as to the material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 261 (Brennan, J., dissenting) (1986)(quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)); *Hot Wax, Inc. v. Turtle Wax, Inc.*, 191 F.3d 813, 818 (7th Cir. 1999). Finally, a scintilla of evidence in support of the non-movant's position is not sufficient to oppose successfully a summary judgment motion; "there must be evidence on which the jury could reasonably find for the [non-movant]." *Anderson*, 477 U.S. at 252.

III.
DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT

Before turning to Defendants' motion for summary judgment, Thompson has filed a motion for leave to file a sur-reply to Defendants' reply in support of their motion for summary judgment. Thompson represents that he is unsure whether he is permitted to file a sur-reply, and therefore, he has tendered one (including additional exhibits) in the event that he is permitted to file a sur-reply.

Local Rule 7.1(D) does not permit sur-replies. Therefore, Thompson has no right to file a sur-reply.

To the extent that Thompson is seeking permission to file a sur-reply, his motion is denied. The Court has reviewed Thompson's proposed sur-reply and does not believe that it is necessary to rule upon Defendants' motion for summary judgment. The Court also notes that the proposed sur-reply is not limited to responding to matters raised by Defendants in their reply. In addition, Thompson's proposed sur-reply comes nearly two months after Defendants filed their reply, and therefore, it came well after the briefing on summary judgment was closed. There is no reason to allow the summary judgment to be re-opened at this late date, especially in light of the fact that Thompson seeks to inject additional evidence into the mix. Accordingly, Thompson's motion is denied, and Thompson's proposed sur-reply and evidence will not be considered by the Court in ruling upon Defendants' motion for summary judgment.

As for Defendants' motion for summary judgment, it is clear that Defendants are entitled to the summary judgment that they seek. Initially, Defendants ask the Court to

deny Thompson's RLUIPA claim as moot because he is no longer being held at the JCDC. Because monetary damages are unavailable under RLUIPA (only injunctive relief), Defendants contend that his RLUIPA claim is moot because Thompson is no longer being held at the JCDC, and therefore, the Court cannot and should not enter any injunctive relief.

Thompson acknowledges that he is no longer being held at the JCDC, but he contends that his RLUIPA claim is not moot because there is a possibility that he may return to the JCDC one day. Because the situs of his detention is outside of his control and because it is quite possible that he may be returned one day to the JCDC, Thompson argues that his RLUIPA claim is not moot.

The Court will not deny Thompson's RLUIPA claim as moot because it is clear that he cannot prevail on the merits of that claim. RLUIPA prohibits prison officials from imposing a "substantial burden on the religious exercise of a person" unless the prison can demonstrate that the burden is "in furtherance of a compelling governmental interest" and is also "the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc(a)(1).

"Religious exercise" includes "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." *Id*. at § 2000cc-5(7)(A). The exercise sought must be based on a sincerely held religious belief and not some other motivation. *Holt v. Hobbs*, 135 S.Ct. 853, 862 (2015)(citing *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2774, n. 28 (2014)).

Under RLUIPA's burden shifting regime, initially, a plaintiff has the burden to demonstrate that his exercise of religion has been substantially burdened. *Holt*, 135 S.Ct. at 862. A substantial burden exists if a state action or prohibition "seriously violates" an inmate's religious beliefs. *Schlemm v. Wall*, 784 F.3d 362, 364 (7th Cir. 2015)(quoting *Holt,* 135 S.Ct. at 862). If a plaintiff meets his burden, the burden then shifts to the defendants to demonstrate both a compelling governmental interest and that the act or prohibition in question was the least restrictive means of furthering that interest. *Holt*, 135 S.Ct. at 863. As RLUIPA provides "greater protection" than that provided by the First Amendment, the Court need only address Thompson's RLUIPA claim. *Id*. at 862; *Johnson v. McCann*, 2010 WL 21004640, * 7 (N.D. Ill. May 21, 2010)("If a challenged policy survives scrutiny under the more generous RLUIPA standard, the policy necessarily survives scrutiny under the First Amendment test as well.").

At a minimum, a substantial burden exists when the government compels a religious person to "perform acts undeniably at odds with fundamental tenets of [his] religious beliefs." *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972). Towards the other end of the spectrum, "a substantial burden on the free exercise of religion . . . is one that forces adherents of a religion to refrain from religiously motivated conduct, inhibits or constrains conduct or expression that manifests a central tenet of a person's religious beliefs, or compels conduct or expression that is contrary to those beliefs." *Koger v. Bryan,* 523 F.3d 789, 798-99 (7th Cir. 2008)(internal quotation and citation omitted). In discussing RLUIPA, the Seventh Circuit has held that a law, regulation, or other governmental command substantially burdens religious exercise if it "bears direct,

primary, and fundamental responsibility for rendering [a] religious exercise...effectively impracticable." *Korte v. Sebelius*, 735 F.3d 654, 683 (7th Cir. 2013)(citing *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003)); *Isby-Israel v. Lemmon*, 2016 WL 3072177, * 4 (S.D. Ind. June 1, 2016).

In the instant case, Defendants did not substantially burden Thompson's ability to practice his Islamic faith. As for failing to provide an Imam to conduct services, the undisputed evidence demonstrates that Defendants attempted to recruit an Imam to lead prayer services but that they were unsuccessful in their attempts to do so. Indeed, the evidence shows that Thompson personally tried to recruit a religious leader to lead Islamic prayer services at the JCDC, but he was unsuccessful in his attempts as well.

The law is clear that jail officials are only required to make reasonable efforts to provide some opportunity for religious practice. *Alston v. DeBruyn*, 13 F.3d 1036, 1040-41 (7th Cir. 1994). Jail officials are not required to provide the tools necessary for inmates to practice their particular religions, nor are they required to provide individuals to lead religious services. *Turner v. Hamblin*, 590 Fed. Appx. 616 (7th Cir. 2014); *Murrell v. Bukowski*, 2011 WL 884736 (C.D. Ill. Mar. 11, 2011); *Carter v. Tegels*, 2016 WL 1029560 (W.D. Wisc. Mar. 15, 2016).

Rather than interfere, Defendants provided a free copy of the Koran to inmates who wanted one. Notably, the evidence shows that Thompson possessed a personal copy of the Koran for his private use during all relevant times. Moreover, the evidence shows that inmates gathered for prayer services themselves and that Thompson was

involved in those prayer services. Finally, inmates—including Thompson—were provided an extra towel to use as an Islamic prayer rug.

Thus, rather than interfere with Thompson's ability to practice his religion, Defendants assisted in or permitted the practice. Simply because Defendants were unable to recruit an Imam to led Islamic services while Thompson was detained at the JCDC, that does not mean that Defendants violated Thompson's First Amendment rights or his rights under RLUIPA because Defendants had no obligation to obtain an Imam.

As for the distribution of copies of the Koran versus copies of the Bible, the undisputed evidence demonstrates that it was Christian volunteers who distributed the Bibles to inmates, not Defendants or JCDC personnel. Regardless, the undisputed evidence reveals that inmates could purchase a copy of the Koran from the commissary, that JCDC personnel distributed free copies of the Koran (approximately 28 in all) to inmates who requested a free copy, and that Thompson always had his copy of the Koran in his possession. Therefore, Thompson's argument regarding the Koran is a non-starter.

Finally, Thompson's argument regarding his missing issues of the *Final Calls* magazine does not preclude summary judgment. Thompson admitted during his deposition that he received his copies of the *Final Calls* magazine during his incarceration at the JCDC in 2016 and 2017. As for the loss of the copy of the magazine during a shakedown of his cell in 2014, such a deprivation is *de minimis* and is insufficient to defeat Defendants' motion for summary judgment. *Hall v. Taylor*, 2011

WL 499974, * 3 (S.D. Ill. Feb. 5, 2011)(holding that an alleged confiscation of one of Hall's religious books amounts, at best, to a *de minimis* burden on Hall's free exercise rights)(citing cases).

IT IS, THEREFORE, ORDERED:

1. Plaintiff's motion for leave to file sur-reply [64] is DENIED.

2. Defendants' motion for summary judgment [56] is GRANTED. The Clerk of the Court is directed to enter judgment in Defendants' favor and against Plaintiff. All other pending motions are denied as moot, and this case is terminated with the Parties to bear their own costs. All deadlines and settings on the Court's calendar are vacated.

3. If Plaintiff wishes to appeal this judgment, he must file a notice of appeal with this Court within 30 days of the entry of judgment. Fed. R. App. P. 4(a)(4).

4. If Plaintiff wishes to proceed *in forma pauperis* on appeal, his motion for leave to appeal *in forma pauperis* must identify the issues that he will present on appeal to assist the Court in determining whether the appeal is taken in good faith. *See* Fed. R. App. P. 24(a)(1)(c); *Celske v. Edwards*, 164 F.3d 396, 398 (7th Cir. 1999)(an appellant should be given an opportunity to submit a statement of his grounds for appealing so that the district judge "can make a responsible assessment of the issue of good faith."); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000)(providing that a good faith appeal is an appeal that "a reasonable person could suppose . . . has some

merit" from a legal perspective). If Plaintiff chooses to appeal, he will be liable for the $505.00 appellate filing fee regardless of the outcome of the appeal.

Entered this 4th day of September, 2018

_/s/ Colin S. Bruce_____
COLIN S. BRUCE
UNITED STATES DISTRICT JUDGE