IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Sean Pressley, Petitioner	:	
v.	:	
Pennsylvania Department of Corrections, Religious Accommodation Review Committee, Eastern Region Deputy Secretary, Director of the Bureau of Inmate Services, Supt. Kerestes, Deputy Collins, Major Vuksta, Major Beggs, Capt. Gavin, Lt. Malick, Counselor Durand, Food Service Supervisor Yarnell, Ms. Stanitis, FCPD Waddel, SCH-Mahanoy Chaplains, Respondents	:	No. 579 MD 2010 Submitted: December 10, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY FILED: January 11, 2011

Before this Court are the preliminary objections of the Pennsylvania Department of Corrections (DOC)[1] to Sean Pressley's (Pressley) petition for review in this Court's original jurisdiction.

Pressley is incarcerated with DOC at the State Correctional Institution-Mahanoy (SCI-Mahanoy). Pressley alleges that he has been recognized

[1] In addition to DOC, the other respondents listed in the caption preliminarily object. They are all employees of DOC.

as a Muslim from the time of his incarceration. Pressley alleges that, according to the Muslim faith, there is a precise manner for cleaning dishes, pots, and pans to remove pork impurities. He further alleges that he became aware that SCI-Mahanoy did not follow this procedure which involves washing six times with water and once with water and earth.

On September 2, 2009, Pressley prepared a religious accommodation request (RAR) that addressed the alleged interference with his religious practices. Pressley requests that he be provided a kosher diet, the one provided to Jewish prisoners. Allegedly, the kosher food is not prepared in impure pots and pans and is not served with impure utensils and trays. Pressley asserts that his faith permits him to eat kosher food. DOC denied the RAR on the basis that a kosher diet is not mandated by the Islamic faith. Pressley grieved the denial. The grievance officer denied the grievance.[2]

In his petition for review in this Court's original jurisdiction, Pressley seeks a declaration that "the actions of the Respondents [DOC] in not providing Petitioner [Pressley] with a diet consistent with his faith violated the free exercise of his religion under the United States and Pennsylvania Constitutions, titles 71 P.S. § 2404, and 42 U.S.C.A. §2000cc." Petition for Review, July 7, 2010, Paragraph No. 34 at 3. He also seeks an injunction to "[i]mmediately institute a practice of cleaning all their pots, pans, utensils serving trays etc. in a manner

[2] The grievance was denied on the basis that the Religious Accommodation Committee of DOC denied the RAR because "a kosher diet is not mandated for inmates of the Islamic faith." Official Inmate Grievance, Initial Review Response, May 28, 2010, at 1.

consistent with Petitioner's [Pressley] faith requirements, or . . . [i]mmediately provide Petitioner [Pressley] with a Kosher diet." ." Petition for Review, July 7, 2010, Paragraph No. 34 at 3. Pressley also seeks the costs of litigation.

On July 19, 2010, DOC preliminarily objects in the nature of a demurrer:

> 5. The Supreme Court has stated that prison administrators may regulate inmate behavior, even if their regulations burden religious practices or beliefs, if the regulations are necessary to further 'legitimate penological objectives.' . . .
>
> 6. In judging the reasonableness of such regulations, the Supreme Court has developed a four-part inquiry that takes into account (1) if a valid, rational connection exists between the prison regulation and the legitimate governmental interest put forward to justify it, (2) the alternative methods of exercising the rights, (3) the impact granting the request would have on 'guards and other inmates,' and (4) the existence of alternatives to the regulation that fully accommodate the prisoner's rights at de minimis cost to valid penological interests. . . .
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> 7. Clearly, a valid, rational connection exists between the prison regulation, or the Religious Accommodation Committee's denial of Petitioner's [Pressley] request, and the legitimate governmental interest put forward to justify it. Though the DOC goes to great lengths to provide inmates with religious-specific diets and worship accommodations, it is administratively prohibitive to allow inmates to classify themselves as a particular religion for some purposes, yet request a diet which conforms with another religion. Such a system would likely create significant administrative and penological difficulties which would impair other institutional operations.
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> 8. Additionally, Petitioner [Pressley] has availed himself of a pork-free diet as provided by the DOC to inmates of

> the Islamic faith. To create a special exception for Petitioner [Pressley], and allow him to effectively choose which religious-specific diet he feels most closely reflects the teachings of his faith despite his identified religious affiliation, would have a negative impact on guards and other inmates, as it may appear that Petitioner [Pressley] is receiving special or preferential treatment.
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> 9. As the Third Circuit has already held, an inmate's 'request for a [religious diet] creates legitimate security concerns, including bringing additional foods from new sources in to the Prison and the possible belief by other inmates that Plaintiff [Pressley] is receiving special treatment.' . . .
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> 10. Petitioner [Pressley] bears the burden of demonstrating the unreasonableness of a prison regulation. . . .
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> 11. Despite alleging that granting his religious accommodation request 'would not have caused them [the DOC] any difficulty' to provide to Petitioner [Pressley], he has simply failed to meet his burden of demonstrating how only allowing inmates to obtain religious-specific diets in coordination with their indicated faith is unreasonable, given the economic and administrative considerations the DOC must weigh. (Citations omitted).

Preliminary Objections, July 19, 2010, Paragraph Nos. 5-11 at 2-4.

In considering preliminary objections, this Court must consider as true all well-pleaded material facts set forth in the petitioner's petition and all reasonable inferences that may be drawn from those facts. Mulholland v. Pittsburgh National Bank, 405 Pa. 268, 271-272, 174 A.2d 861, 863 (1961). Preliminary objections should be sustained only in cases clear and free from doubt that the facts pleaded are legally insufficient to establish a right to relief. Werner v. Zazyczny, 545 Pa. 570, 681 A.2d 1331 (1996).

Both parties point to the test set forth by the United States Supreme Court in Turner v. Safley, 482 U.S. 78 (1987):

> [S]everal factors are relevant in determining the reasonableness of the regulation at issue. First, there must be a 'valid, rational connection' between the prison regulation and the legitimate governmental interest put forward to justify it. . . . Thus, a regulation cannot be sustained where the logical connection between the regulation and the asserted goal is so remote as to render the policy arbitrary or irrational. Moreover, the governmental objective must be a legitimate and neutral one. We have found it important to inquire whether prison regulations restricting inmates' First Amendment rights operated in a neutral fashion, without regard to the content of the expression. . . .
>
> A second factor relevant in determining the reasonableness of a prison restriction . . . is whether there are alternative means of exercising the right that remain open to prison inmates. Where 'other avenues' remain available for the exercise of the asserted right . . . courts should be particularly conscious of the 'measure of judicial deference owed to corrections officials . . . in gauging the validity of the regulation.'
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> A third consideration is the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally. In the necessarily closed environment of the correctional institution, few changes will have no ramifications on the liberty of others or on the use of the prison's limited resources for preserving institutional order. When accommodation of an asserted right will have a significant 'ripple effect on fellow inmates or on prison staff, courts should be particularly deferential to the informed discretion of corrections officials. . . .
>
> Finally, the absence of ready alternatives is evidence of the reasonableness of a prison regulation. . . . By the same token, the existence of obvious, easy alternatives

> may be evidence that the regulation is not reasonable, but is an 'exaggerated response' to prison concerns. This is not a 'least restrictive alternative test': prison officials do not have to set up and then shoot down every conceivable alternative method of accommodating the claimant's constitutional complaint. . . . But if an inmate can point to an alternative that fully accommodates the prisoner's rights at *de minimis* cost to valid penological interests, a court may consider that as evidence that the regulation does not satisfy the reasonable relationship standard. (Citations omitted).

Turner, 482 U.S. at 89-91.

As to the first prong of the Turner test, DOC asserts that it is administratively prohibitive to allow inmates to classify themselves as a particular religion for some purposes, yet request a diet which conforms with another religion. DOC also asserts that this system would create significant and penological difficulties which would impair other institutional operations. DOC does not explain why such a system would be "administratively prohibitive" or why such a system "would likely create significant administrative and penological difficulties." With nothing other this statement alone, this Court is unable to conclude that DOC established a 'valid, rational connection' between the prison regulation and the legitimate governmental interest put forward to justify it.

As to the second prong, DOC asserts that Pressley has availed himself of a pork-free diet. Pressley, however, states that DOC's assertion is inaccurate because DOC offers all inmates a general diet and an alternate protein item to whatever meat source that is served to inmates regardless of religious preference. He repeats his allegation that DOC does not offer a pork-free diet for "adherents of the Islamic faith" because "there is contamination of the food preparation and

serviceware." Pressley's Brief at 4. At this preliminary objection stage, this Court is unable to discern whether the second prong is met.

With respect to the third prong, the impact on guards and other inmates, DOC argues that to grant Pressley's request would have a negative impact on guards and other inmates because it would seem that Pressley was receiving special treatment. Pressley, however, asserts that right now certain inmates receive kosher meals even though they are not Jewish. Once again, at this stage of the proceedings, DOC has not established a negative impact on the guards and inmates. DOC does not address the fourth prong.

DOC next contends that Pressley has failed to demonstrate that DOC's regulation on religiously appropriate meals is unreasonable. The petitioner bears the burden of proving the unreasonableness of a regulation. Overton v. Bazzetta, 539 U.S. 126 (2003). DOC asserts that Pressley has failed to show that only allowing inmates to obtain religious-specific diets in coordination with their indicated faith is unreasonable, given the economic and administrative considerations that DOC must weigh. DOC does not specifically indicate what these economic and administrative considerations are. It is unclear at this time to this Court, especially when it is undisputed that certain inmates receive kosher diets, what the administrative and economic considerations are.[3]

[3] In its brief, DOC also suggests that Pressley fails to establish that he has a clear right to relief in mandamus. However, it does not appear from his petition that Pressley directly seeks mandamus relief, and DOC has not raised this issue in its preliminary objections.

Accordingly, DOC's preliminary objections are overruled, and DOC shall file an answer to Pressley's petition for review within thirty days of the date of this order.

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BERNARD L. McGINLEY, Judge

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O R D E R

AND NOW, this 11th day of January, 2011, the preliminary objections of the Pennsylvania Department of Corrections are overruled. The Pennsylvania Department of Corrections shall file an answer to Sean Pressley's petition for review within thirty days of the date of this order.

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BERNARD L. McGINLEY, Judge