

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 2, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP841

Cir. Ct. No. 2012CV1900

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**STATE OF WISCONSIN EX REL. RUFUS WEST A/K/A MUSLIM MANSA
LUTALO IYAPO,**

PETITIONER-APPELLANT,

v.

GARY HAMBLIN,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
C. WILLIAM FOUST, Judge. *Affirmed.*

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

¶1 PER CURIAM. Rufus West, also known as Muslim Mansa Lutalo Iyapo, appeals an order denying his petition for writ of certiorari. On appeal, West challenges the Department of Corrections' dismissal of his inmate complaints, which alleged that the department improperly denied him the opportunity to

participate in Islamic congregational study and prayer and confiscated religious clothing in violation of state law and the department's own policies. For the reasons set forth below, we affirm the order of the circuit court.

¶2 West is an inmate at Columbia Correctional Institution (CCI) and a member of the Muslim faith. He filed inmate complaints alleging that, since arriving at CCI in 2007, he has been deprived of the opportunity to attend Jumuah and Talim services¹ on a number of occasions because a clergy member or volunteer was not available to lead the services. He further alleged that the department improperly confiscated a pair of his pants that were part of a "kurta" prayer outfit consisting of a shirt and baggy pants. The department dismissed the complaints, and West petitioned the circuit court for certiorari review, naming then department secretary Gary Hamblin as the respondent. The circuit court denied the petition, concluding that West had failed to demonstrate that the decisions were contrary to law, arbitrary, or unsupported by the evidence. West now appeals.

¶3 When reviewing the decision of an administrative agency such as the Department of Corrections, we review the agency's decision and not that of the circuit court. *See Kozich v. Employe Trust Funds Bd.*, 203 Wis. 2d 363, 368-69, 553 N.W.2d 830 (Ct. App. 1996). Our scope of review in certiorari actions is limited to considering: (1) whether the department kept within its jurisdiction, (2) whether it proceeded on a correct theory of law, (3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment,

¹ The petition for writ of certiorari filed by West in the circuit court states that the "Holy Quran mandates that Muslim attend Jumuah every Friday. Talim is also required for Muslim to study Islam."

and (4) whether the evidence reasonably supported the determination. *Coleman v. Percy*, 96 Wis. 2d 578, 588, 292 N.W.2d 615 (1980). An inmate must prove that the department's decisions were arbitrary and capricious by a preponderance of the evidence. *State ex rel. Gendrich v. Litscher*, 2001 WI App 163, ¶4, 246 Wis. 2d 814, 632 N.W.2d 878.

¶4 We will address first West's argument that, when the department dismissed his complaints about Talim and Jumuah, it violated state law and its own rules. For the reasons explained below, we conclude that the argument is without merit.

¶5 WISCONSIN STAT. § 301.33 states, in relevant part:

(1) Subject to reasonable exercise of the privilege, members of the clergy of all religious faiths shall have an opportunity, at least once each week, to conduct religious services within the state correctional institutions. Attendance at the services is voluntary.

(2) Every inmate shall receive, upon request, religious ministrations and sacraments according to the inmate's faith.

¶6 WISCONSIN ADMIN. CODE § DOC 309.61(1)(b) states, "Inmates may pursue lawful religious practices required or encouraged by their respective religions which are consistent with their orderly confinement, the security of the institution and fiscal limitations." In addition, the department's internal policy on religious services states that services "will be led by an approved spiritual leader/clergy, volunteer or Chaplain," but if none of these is available, "institution/center staff may supervise per guidelines established by the Chaplain/designee." DAI Policy 309.61.01(C). The department's internal policy further provides that "[u]nder no circumstances will an inmate be authorized to lead or conduct a religious service or study group." *Id.*

¶7 We note that these statutes and regulations do not confer upon inmates the right to weekly religious services, nor do they impose a duty on the department to ensure that someone is available to lead services. WISCONSIN STAT. § 301.33 provides only that “members of the clergy of all religious faiths shall have an *opportunity*, at least once each week” to conduct services. (Emphasis added). Thus, the department did not breach any duty imposed by the statutes or code when it failed to make Jumuah and Talim available when a volunteer could not lead the services.

¶8 West argues that an inmate should be permitted to lead services when no volunteer is available. Hamblin counters that, while the department’s reasoning was not spelled out in its decisions dismissing West’s inmate complaints, there is a reasonable security-related purpose for the policy against inmates leading services. Consistent with this position, federal courts have concluded that a ban on inmate-led religious services is grounded in valid security concerns. See *Johnson-Bey v. Lane*, 863 F.2d 1308, 1310-11 (7th Cir. 1988); *Hadi v. Horn*, 830 F.2d 779, 784-85 (7th Cir. 1987). West fails to persuade us otherwise and, thus, he has not met his burden of proving that the department’s decisions regarding Talim and Jumuah services were arbitrary and capricious.

¶9 We turn next to West’s argument that the department’s confiscation of the pants portion of his kurta outfit was contrary to the department’s own rules and state law. Though he cites a number of statutory and administrative code sections, his argument focuses mainly on DAI Policy 309.61.02, which concerns religious property of inmates. According to an attachment to DAI Policy 309.61.02 entitled “Religious Property Chart,” a Muslim inmate is allowed a limit of one “Prayer Robe, Thawb, Kurda, or Jalabiya.” The garment must be white with no markings and may be worn in the cell or at services only. West asserts

that the pants confiscated by the department were part of his kurta prayer outfit consisting of a shirt and baggy pants. He argues that, as a Muslim, both garments are necessary for him to wear during congregational study and prayer.

¶10 Hamblin argues that there is a security basis behind not including pants as part of the religious apparel permitted by DAI Policy 309.61.02. Because inmates are allowed to wear their religious apparel only in their cells or in the chapel under DAI Policy 309.61.02, and not while moving about the facility, inmates would have to change into their pants in the chapel. Hamblin asserts that changing into baggy pants in the chapel presents a security concern. He cites written statements in the record by CCI's chaplain and the head of the Department of Adult Services stating that they denied West's request for the pants for security reasons.

¶11 We are satisfied that the security concerns documented by the department are valid. WISCONSIN ADMIN. CODE § 309.61(1)(b) permits inmates to engage in religious practices only insofar as they are "consistent with their orderly confinement" and "the security of the institution." We can imagine a situation in which multiple inmates changing into baggy pants at the same time might pose a security risk. To contrast, a prayer shirt can simply be donned over whatever clothing the inmate is already wearing and, therefore, appears to pose less of a risk. Because the department has demonstrated a valid security basis for its confiscation of the pants, we affirm its decision on that issue.

¶12 West also states that the department's actions with respect to the pants violated certain sections of the administrative code and the Wisconsin Statutes. *See* WIS. ADMIN. CODE § DOC 309.61(1)(d), § DOC 309.61(5), and WIS. STAT. § 301.33(1) and (2). The sections he cites concern making religious

facilities available to inmates, the transmission of religious literature, the rights of members of the clergy to conduct religious services within correctional institutions, and an inmate's right to receive religious ministrations and sacraments. *Id.* West does not explain how the confiscation of his pants violated any of these statute or code sections and, thus, we affirm the decision of the department.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

