

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|------------------------|--------------------------------|
| GREGORY HUBBARD, | § |
| | § |
| Plaintiff Below- | § No. 245, 2003 |
| Appellant, | § |
| | § |
| v. | § Court Below—Superior Court |
| | § of the State of Delaware, |
| THOMAS CARROLL et al., | § in and for New Castle County |
| | § C.A. No. 03C-03-271 |
| Defendants Below- | § |
| Appellees. | § |

Submitted: July 3, 2003

Decided: August 27, 2003

Before **HOLLAND, BERGER** and **STEELE**, Justices

ORDER

This 27th day of August 2003, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The plaintiff-appellant, Gregory Hubbard, filed an appeal from the Superior Court's April 4, 2003 order dismissing his civil complaint as legally frivolous. The State of Delaware, as the real party in interest, has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Hubbard's opening brief that the appeal is without merit. We agree and AFFIRM.

(2) Hubbard is an inmate at the Delaware Correctional Center in Smyrna, Delaware (“DCC”). The record indicates that Hubbard began employment as a machinist in the garment shop at DCC in August 2001. After being fired on February 8, 2002, Hubbard filed a civil complaint in the Superior Court alleging that his termination violated due process and constituted an unlawful employment practice under the Delaware statute.¹ The Superior Court permitted Hubbard to file his complaint in forma pauperis,² but ruled that the complaint was legally frivolous and dismissed it.³

(3) In this appeal, Hubbard claims that the Superior Court committed legal error and abused its discretion by dismissing his complaint as legally frivolous. He argues that the Superior Court misconstrued the basis for his complaint, which was that he was terminated from his employment because he is a Muslim.⁴

¹DEL. CODE ANN. tit. 19, § 711(a) (stating that it is an unlawful employment practice for an employer to “discharge any individual . . . because of such individual’s . . . religion . . .”).

²DEL. CODE ANN. tit. 10, § 8802.

³DEL. CODE ANN. tit. 10, § 8803. The basis for the dismissal was that “[a]n incarcerated inmate has no legal right to hold any specific job.”

⁴According to Hubbard, he had permission to engage in Islamic religious services on Fridays starting at noon and, therefore, was excused from work all day on Fridays, but was fired because he played basketball rather than working on Friday morning.

(4) Hubbard's claims are without merit. To the extent Hubbard claims his termination violated due process and he should be reinstated in his job, the Superior Court was correct that he has no protected liberty interest in a particular prison work assignment.⁵ To the extent Hubbard claims that he was fired from his job because he is a Muslim, he has failed to state either a constitutional claim or a claim under the Delaware statute because, as is apparent from Hubbard's complaint, he was fired for playing basketball rather than going to work, not because he is a Muslim. Finally, to the extent Hubbard claims that the prison authorities have hindered his ability to freely practice his religion, he has asserted no factual basis for any such claim.⁶ Thus, in the absence of any legally cognizable claim, the Superior Court properly dismissed Hubbard's complaint.

(5) It is manifest on the face of Hubbard's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

⁵*Mosley v. Klein*, Del. Supr., No. 551, 2002, Walsh, J. (Feb. 28, 2003) (citing *Clough v. State*, 686 A.2d 158, 159 (Del. 1996)).

⁶*Cruz v. Beto*, 405 U.S. 319 (1972).

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice