NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued October 3, 2017
Decided November 8, 2017

Before

MICHAEL S. KANNE, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

No. 16-3707

OSCAR GARNER,
Plaintiff-Appellant,

v.

JAMES MUENCHOW, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 15-C-0777

Lynn Adelman,
Judge.

O R D E R

Oscar Garner, a Muslim inmate, contends that prison officials prevented him and other Muslims, but not Christian inmates, from obtaining items for prayer. After evaluating the two principal claims that Garner brought—the denial of his rights to the free exercise of religion and equal protection—the district court entered summary judgment for the defendants. Because the record permits a rational factfinder to conclude that the officials intentionally violated Garner's free-exercise and equal-protection rights, we vacate and remand for further proceedings.

Factual Background

Because we are reviewing the entry of summary judgment, we construe the facts in the record in Garner's favor; a factfinder may but is not required to find these facts. *Estate of Perry v. Wenzel*, 872 F.3d 439, 446 (7th Cir. 2017). Garner is a practicing Muslim who believes it is mandatory for him to recite from the Quran every day. He prays five times daily, and for prayer he needs the Quran, a rug, kufi cap, and beads. Inmates at Waupun Correctional Institution where Garner is imprisoned, including those housed in its segregation unit, may possess these items. Until November 2012 Garner was not in segregation, and he had in his cell a borrowed Quran and the other religious materials that he needed for his daily prayers.

Garner's ability to practice his religion changed in late 2012. For four months, from November 2012 to March 2013, Garner was moved to segregation. During those four months he could not obtain prayer items and could not practice his religion. Although prison policy allows a prisoner to use prayer items while in segregation, he could not bring from his general-population cell to segregation any borrowed items. Instead, the policy allowed him to request (in writing) to borrow a Quran anew from the chapel, or he could use an approved catalog to buy from an outside vendor the religious items that he needed for praying.

While in segregation Garner sought to obtain a Quran through the prison's approved procedure, but to no avail. First he sought a catalog. He wrote to the unit manager, Brian Greff, six times in November asking for a copy of the catalog so he could order a Quran. Greff never answered his requests. (Greff disputes receiving them, but at this point in the case we must assume that he did.) Greff was responsible for the overall operation of the segregation unit, including the catalog-ordering procedure. When Garner was requesting a copy of the catalog, Greff knew that they might be in short supply, but he did not tell Garner this.

Two months later, Greff sent Garner on what turned out to be a wild goose chase for the catalog. Responding to one of Garner's requests for the catalog in January, Greff told Garner to ask the unit lieutenant, Jessie Schneider, and sergeant, Shane Waller, for one. Garner wrote to both, but neither answered. When Garner spoke to the sergeant in person, the sergeant answered (incorrectly) that prison policy prohibited him from ordering religious items from the catalog while celled in his section of segregation. After getting nowhere with the lieutenant and sergeant, Garner wrote to Greff again in February, one more time asking for the catalog. This time Greff acknowledged to Garner that no copies of the catalog were available. He said that he was creating and

would soon distribute to all inmates an "order form" of the items approved for purchase from the vendor.

Now aware, after three months of asking, that catalogs for buying Qurans were unavailable, Garner tried to use the second option in the prison's procedure: he wrote to the chapel to ask to borrow one. The chaplain did not answer his request. (The chaplain also disputes receiving the request, but again at this point in the case we must assume that he did.) When Garner later asked the chaplain in person for a catalog to order a Quran, he replied that he would not get him one. Instead he advised Garner to turn back to Greff, where Garner had started, for a catalog. By March Greff distributed the newly created order form to each inmate in segregation. But this was too late: by this time Garner had been released from the segregation unit.

Christian inmates received the catalog and prayer books while in segregation even though Muslim inmates did not. Three Christian inmates attested that, while in segregation around the same time as Garner, the chaplain gave them a bible. Another inmate attests that he saw the chaplain refuse requests from Muslim inmates for copies of the Quran. Two of the Christian inmates also received a copy of the approved catalog from the officials controlling the segregation unit while those officials denied another Muslim inmate besides Garner a copy of the catalog.

Garner then sued Greff, the chaplain, the unit sergeant, and unit lieutenant under 42 U.S.C. § 1983. (He also sued a complaint examiner and deputy warden, both of whom rejected his internal grievance, but the district court correctly dismissed them. By the time they received his grievance, Garner was leaving segregation, so they did not compound any legal injuries during segregation. *See Burks v. Raemisch*, 555 F.3d 592, 595 (7th Cir. 2009)). Garner proceeds on two claims. First he contends that the defendants violated his free-exercise rights by failing to accommodate his religion with a catalog. Second he argues that they discriminated against his religion in violation of equal protection. On Garner's free-exercise claim, the district court concluded that Garner provided insufficient evidence that the defendants intended to burden his religious practices. On the equal-protection claim, the court ruled that Garner did not provide evidence that the defendants intended to discriminate against Muslims. We disagree with both rulings.

Legal Analysis

We begin with Garner's claim that Greff, the chaplain, and the two unit officials, denied him his free exercise of religion. Prisoners retain a limited right to exercise their

religious beliefs. *See O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348–49 (1987); *Turner v. Safley*, 482 U.S. 78, 89–91; *Tarpley v. Allen County*, 312 F.3d 895, 898 (7th Cir. 2002). Prison officials may not intentionally and substantially interfere with an inmate's ability to practice his faith unless the restriction is reasonably related to a legitimate penological interest. *See Turner*, 482 U.S. at 89. The defendants do not cite any penological reasons for refusing to answer Garner's requests or seriously dispute that the burden on his religious exercise was substantial. Indeed denying prisoners access to their holy text or ritual items is a substantial burden on free-exercise rights. *See Sutton v. Rasheed*, 323 F.3d 236, 253–57 (3d Cir. 2003) (prisoners must be allowed to keep sacred books that their religion encourages them to read); *Kay v. Bemis*, 500 F.3d 1214, 1220 (10th Cir. 2007) (prisoners must be allowed to buy ritual items that their religion mandates).

The only real issue is whether the record allows a factfinder to conclude that the defendants intended to prevent Garner from practicing Islam for months. We believe that it does. A trier of fact could reasonably believe that for three months Greff intended to prevent Garner from practicing his religion: Greff knew that Garner wanted a catalog and knew that they were unavailable. Despite his knowledge, he chose *not* to tell Garner that the catalogs were unavailable (or try to resolve the shortage) and thereby willfully deprived Garner of the chance to seek another option for his religious exercise. Even worse, he gave Garner the run-around, telling him to ask the lieutenant and sergeant for a catalog that he believed was unavailable. Likewise a factfinder could conclude that the lieutenant and sergeant both intended that Garner not practice his religion. They knew that prison policy allowed Garner to use the catalog but they also ignored his requests for one. The sergeant actually misled Garner, misstating that the policy *prohibited* Garner from using a catalog. Finally the chaplain's refusal to loan a Quran to Garner, in response to his request for one, also permits a reasonable finding of an intent to prevent Garner's religious practice.

The defendants reply that they are qualifiedly immune from a claim that they failed to accommodate Garner's religious needs because case law does not clearly establish that prison officials must "accommodate" inmates' religious needs by supplying them the catalogs or other means to facilitate religious practice. *Lewsi v. Sternes*, 712 F.3d 1083, 1085 (7th Cir. 2013) ("Whether there is a constitutional as distinct from a statutory right to a religious accommodation is an open question. . ."). But the defendants did not just fail to accommodate him; the evidence suggests that they intentionally and substantially prevented his religious practice by refusing to tell him how he, on his own, may permissibly obtain the items that he needed for practice.

Because the case law clearly prohibits prison officials from intentionally preventing religious practice without penological justification, the free-exercise claim may proceed.

We now turn to Garner's equal-protection claim. Prison officials may not discriminate on the basis of religion except to the extent required by the needs of prison administration. *See Riker v. Lemmon*, 798 F.3d 546, 552 (7th Cir. 2015); *Maddox v. Love*, 655 F.3d 709, 719 (7th Cir. 2011). Nondiscrimination means that the officials must respect the religious needs of inmates belonging to minority or non-traditional religions to the same degree as those belonging to larger and more traditional denominations. *See Maddox*, 655 F.3d at 719; *Kaufman v. Pugh*, 733 F.3d 692, 696 (7th Cir. 2013).

The record contains a genuine fact dispute about whether the defendants intended to discriminate against Muslims in segregation. For the segregation unit that Greff and his two subordinates run and the chaplain visits, Garner furnished evidence that Christian prisoners obtained catalogs and Bibles, while Garner and other Muslim inmates were just as often denied catalogs and Qurans. We recognize that the defendants furnished contrary evidence: To help Garner after he was in segregation for three months without a copy of the catalog, Greff created a makeshift order form in February to address the catalog shortage. And before Garner went into segregation, the chaplain had loaned him a Quran.

The defendants' evidence does not obviate the need for a trial for three reasons. First, it is just evidence. To overcome summary judgment, Garner need only present evidence from which a reasonable jury could infer discrimination. He did: Greff, the unit officials, and the chaplain made it easier for Christians to obtain Bibles or catalogs than for Muslims to obtain Qurans or catalogs. It is discriminatory to provide religious texts to one religion to the exclusion of another. Second, Greff delayed addressing the shortage affecting Garner until February, even though he knew about it months earlier, and the chaplain refused to give Qurans to Muslims in segregation. This, too, suggests discrimination. Third, the shifting excuses that the defendants gave to Garner is also evidence of discrimination. At first the sergeant told Garner, incorrectly, that prison policy prohibited him from receiving a catalog. But once this suit began, the defendants abandoned that excuse and blamed a catalog shortage. The changing excuses raise a jury question about the veracity of the later contention. *See Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147 (2000) (holding that jury may infer from falsity of defendant's explanation that defendant "is dissembling to cover up a discriminatory purpose"); *Appelbaum v. Milwaukee Metro. Sewerage Dist.*, 340 F.3d 573, 579 (7th Cir. 2003)

(one "can reasonably infer pretext" from defendant's "shifting or inconsistent explanations" for challenged action).

We conclude that the district court improperly entered summary judgment in favor of the defendants. We repeat that this conclusion is based on a construction of the record that favors Garner; a trier of fact need not reach the same findings. Accordingly, the judgment of the district court is VACATED, and the case is REMANDED for further proceedings.