NONPRECEDENTIAL DISPOSITION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

Submitted May 17, 2024*
Decided June 28, 2024

Before

THOMAS L. KIRSCH II, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-2334

CHARLES DOUGLAS YODER,
Plaintiff-Appellant,

v.

ROBERT PRINCE, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Illinois.

No. 22-cv-2004-NJR

Nancy J. Rosenstengel,
Chief Judge.

O R D E R

Charles Yoder, an Illinois inmate who was formerly incarcerated at Shawnee Correctional Center in Vienna, Illinois, appeals the dismissal of his civil rights suit against prison officials for refusing to allow him to purchase a "body puff" because he

* The appellees were not served with process and are not participating in this appeal. We have agreed to decide the case without oral argument because the appellant's brief and the record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

is a cisgender man. Because Yoder's complaint states an equal protection claim and the district court did not apply the correct constitutional framework for analyzing the claim before dismissing it at screening, we vacate the judgment and remand the case for further proceedings.

We accept as true the well-pleaded facts alleged in Yoder's pro se complaint, which we construe liberally. *Balle v. Kennedy*, 73 F.4th 545, 557 (7th Cir. 2023). In October 2021, Yoder ordered a body puff (also called a loofah or shower puff) from the prison's commissary. But he was prevented from completing the purchase because he was not on a list of confirmed transgender inmates. The commissary supervisor told Yoder that if he wanted to purchase the body puff, he would need to change his gender identity to female. Another commissary worker made loud, disparaging comments about Yoder wanting to purchase the body puff, which initiated rumors about Yoder's gender identity. This led other inmates to harass Yoder and make derogatory remarks to him.

Distraught over this treatment, Yoder filed an inmate grievance, which was denied at all levels of review. In the process, Yoder learned that (according to the corrections supply supervisor) the Statewide Commissary Committee of the Illinois Department of Corrections had adopted a policy of selling body puffs only to transgender individuals. One grievance counselor explained that the issue of "commissary items and specific commissary lists for transgender female individuals" is "an administrative decision." Yoder also cites an email from a counselor to clinical staff stating that body puffs are "privilege items for confirmed transgender females only."

Yoder eventually turned to federal court. He sued the commissary workers, everyone involved in the grievance process, the Department of Corrections, and the Statewide Commissary Committee under 42 U.S.C. § 1983. Yoder asserted that the policy of selling certain items only to transgender inmates violates the Equal Protection Clause of both the Fourteenth Amendment and the Illinois Constitution.

At screening under 28 U.S.C. § 1915A(b), the district court dismissed Yoder's complaint for failure to state a claim upon which relief could be granted. The court concluded that there is no constitutional right to purchase any items from a prison commissary and that Yoder failed to allege he suffered disparate treatment, was a member of a "protected class," or that the prison's actions were intentionally discriminatory. Nor could Yoder state a class-of-one equal-protection claim because, the court said, he did not allege that he was similarly situated to inmates who could purchase body puffs. After declining to amend his complaint, Yoder now appeals.

On appeal, Yoder contends that his complaint was mischaracterized. Yoder argues that his complaint stated a claim that the body-puff policy violates his right of equal protection because the policy classifies prisoners according to whether they are transgender or cisgender and subjects the classes to disparate treatment. He does not assert (as the district court suggested) that he has a constitutional right to purchase items from a commissary. Rather, he maintains that, once his prison chose to make an item available in its commissary, the Equal Protection Clause prohibits it from selling the item only to transgender inmates.

Prison officials may treat inmates differently if "the unequal treatment is rationally related to a legitimate penological interest," except when the disparate treatment is "based on a suspect class," in which case heightened scrutiny applies. *Flynn v. Thatcher*, 819 F.3d 990, 991 (7th Cir. 2016); *see also City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439–42 (1985). When a challenged policy distinguishes between individuals based on their transgender status but cannot be characterized as sex discrimination, the law is unsettled on what level of scrutiny applies. *See Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1050–54 (7th Cir. 2017), *abrogated on other grounds by Ill. Republican Party v. Pritzker*, 973 F.3d 760, 762–63 (7th Cir. 2020); *A.C. ex rel. M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 772–74 (7th Cir. 2023), *cert. denied*, 144 S. Ct. 683 (2024). We need not resolve that question today, however, because we can assume for our purposes—but we do not decide—that the default of rational basis review applies.

Even under that standard, which is the most favorable to the state, Yoder's complaint might have survived dismissal. His complaint presents the question of whether the prison's policy of limiting the sale of body puffs to transgender inmates "is rationally related to a legitimate penological interest." *Flynn*, 819 F.3d at 991. Yoder believes the policy is not. He may be correct, or the policy may be able to survive constitutional scrutiny in the end. *See, e.g.*, *St. Joan Antida High Sch. Inc. v. Milwaukee Pub. Sch. Dist.*, 919 F.3d 1003, 1010 (7th Cir. 2019) (looking to underlying facts like "overcrowding" and "cost savings" in context to determine whether school district policy was constitutional). The district court is better suited to addressing this question in the first instance on remand. *S.E.C. v. Bauer*, 723 F.3d 758, 762 (7th Cir. 2013) ("We decline to rule on th[is] issue[] in the first instance absent a ruling from the district court.").

We note also that, because the alleged policy is facially discriminatory, Yoder did not have to allege a discriminatory purpose, *see Shaw v. Reno*, 509 U.S. 630, 642–44

(1993), or the existence of a comparator, *St. Joan Antida*, 919 F.3d at 1010. Nor was he required to allege membership in a protected class, an element of the prima facie case under the burden-shifting framework for Title VII cases. *See McCauley v. City of Chicago*, 671 F.3d 611, 615–16 (7th Cir. 2011) (explaining that the prima facie case requirements from Title VII doctrine cannot be imported to equal-protection cases outside the public-employment context). Finally, there is no need to consider whether the complaint stated a class-of-one claim, because Yoder's allegations—discrimination against a category of inmates—are inconsistent with that theory of equal protection. *Id.*

Yoder's complaint therefore should not have been prematurely dismissed. What level of scrutiny applies to the policy at issue is something for the parties and the district court to address in the first instance. We VACATE the judgment and REMAND this case for further proceedings.