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United States District Court,
C.D. California.

Samuel ROBINSON, Plaintiff,
v.
Melissa ROPER, Defendants.

No. CV 06-3817-TJH (PJW).
|
Feb. 17, 2010.

West KeySummary

1 **Constitutional Law**
Mental Health
Mental Health
Disposition;Commitment

A civil detainee's First Amendment right to freely practice religion was not violated when staff members handled religious materials kept in detainee's locker during an authorized search for contraband. The civil detainee failed to establish that it interfered with his ability to practice his religion when the staff removed a prayer rug, a Koran, and a Bible from the detainee's locker and placed the times on the floor. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

PATRICK J. WALSH, United States Magistrate Judge.

***1** This Report and Recommendation is submitted to the Hon. Terry J. Hatter, Jr., United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California. For the reasons discussed below, it is recommended that Defendants' unopposed motion for summary judgment be granted.

I.

SUMMARY OF FACTS

In 2006, Plaintiff Samuel Robinson was being housed at Atascadero State Hospital ("ASH") for care and treatment under California's Sexually Violent Predator Act, Cal. Welf. & Inst.Code §§ 6600-6609.3. (Joslin Decl. ¶ 9.) Plaintiff had a reputation for making "pruno," an alcoholic beverage made with sugar, fruit, juice, and pieces of bread. (Roper Decl. ¶ 5.) Alcohol is not allowed at ASH. (Roper Decl. ¶ 4.) Plaintiff was placed on a treatment plan aimed at preventing him from making pruno. (Roper Decl. ¶ 6.) As part of that plan, Plaintiff was monitored during meals to ensure that he did not take pruno-making ingredients from the cafeteria and his room was searched daily. (Roper Decl. ¶ 6.) Despite these efforts, Plaintiff continued to make pruno, as evinced by the fact that pruno and pruno-making materials were found in his room and on his person on numerous occasions after the plan was implemented. (Roper Decl. ¶ 7.)

On March 3, 2006, at lunchtime, Plaintiff approached Defendant Gabriel Perez (nee Saldana), a psychiatric technician, with a partially clenched hand and threatened her, saying "The fun is just about to start around here. You just wait and see because you all ain't seen nothing yet!" (Perez Decl. ¶¶ 5, 6.) Defendant Perez reported the incident to Defendant Roper, a unit supervisor. (Perez Decl. ¶ 7.) Plaintiff became very argumentative and shouted profanities at Roper when she confronted him about the incident. (Roper Decl. ¶ 10.) Roper believed that she smelled a "fruity prunolike odor" on Plaintiff's breath. (Roper Decl. ¶ 13.) Roper directed Plaintiff to leave the dining room, but he refused. Roper then summoned the hospital police because she believed that it was possible that Plaintiff would become violent. (Roper Decl. ¶ 11.)

Roper ordered a search of Plaintiff's room, which she is authorized to do where, as here, she believes that a patient is hiding contraband in his room. (Roper Decl. ¶¶ 12, 13.) The search was carried out in accordance with the hospital's policies and procedures. (Roper Decl. ¶ 14.) Plaintiff was not allowed to be present during the search because he was agitated and acting in a threatening manner. (Roper Decl. ¶ 14.) Another patient designated as a "ward government member" was present during the

search, instead. (Roper Decl. ¶ 14.) Numerous pruno-making materials were found in Plaintiff's room and confiscated. (Roper Decl. ¶ 15.) All of Plaintiff's remaining property was left in his room in a "reasonably neat and orderly fashion," in accordance with hospital policy. (Roper Decl. ¶ 16.)

***2** Plaintiff kept various religious items, including a Bible, Koran, and prayer rug, in a locker in his room. (Third Amended Complaint ("TAC") at 7. [1]) A note on the side of the locker warned that no one should touch his Koran. (TAC at 5.) Plaintiff alleges that during the search of his room all of his religious materials were taken out of his locker and left in a pile on the floor, which greatly upset and angered him. (TAC at 7.) Plaintiff refused to pick them until two days later when Defendant Roper went to Plaintiff's room and apologized to him for the items being left on the floor after the search. (TAC at 7.)

II.

ANALYSIS

Plaintiff filed this civil rights suit under 42 U.S.C. § 1983, alleging that Defendants Roper and Saldana violated his First Amendment right to freely exercise his religion by desecrating his Bible, Koran, and prayer rug. He also sought injunctive relief.

Defendants move for summary judgment, arguing that Plaintiff failed to show that their conduct burdened his ability to freely exercise his religion, and, in the alternative, that they are entitled to qualified immunity. Defendants also argue that the claim for injunctive relief is moot because Plaintiff has been transferred to another facility. Plaintiff has not opposed the motion. For the reasons set forth below, the Court concludes that Defendants are entitled to summary judgment.

A. *Standard of Review*

Under Federal Rule of Civil Procedure 56(c), summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. A "genuine issue" exists only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. *See Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

The moving party in a summary judgment motion is tasked with presenting the Court with admissible evidence that establishes that there is no genuine, material factual dispute and that she is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett,* 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). A factual dispute is "material" only if it might affect the outcome of the suit under governing law. *See Anderson,* 477 U.S. at 248. The Court views the inferences it draws from the underlying facts in a light most favorable to the non-moving party. *See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.,* 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).

Under Rule 56, the non-moving party also has a burden in opposing a summary judgment motion. He must make a "showing sufficient to establish the existence of an element essential to [his] case, and on which [he] will bear the burden of proof at trial ... since a complete failure of proof concerning an essential element of [his] case necessarily renders all other facts immaterial." *Celotex,* 477 U.S. at 322-23. However, the non-moving party's failure to oppose a summary judgment motion does not relieve the moving party of his burden to establish that there is no genuine issue as to any material fact, and that he is entitled to judgment as a matter of law. *See Martinez v. Stanford,* 323 F.3d 1178, 1182-83 (9th Cir.2003) ("[A] nonmoving party's failure to comply with local rules does not excuse the moving party's affirmative duty under Rule 56 to demonstrate its entitlement to judgment as a matter of law.").

B. *First Amendment: Free Exercise of Religion*

***3** Plaintiff complains that Defendants violated his right to freely exercise his religion by desecrating his religious materials. This claim is without merit.

Civil detainees retain the protections afforded by the First Amendment, including the right to freely practice their religion. *See O'Lone v. Estate of Shabazz,* 482 U.S. 347, 348 (1987) (citing *Pell v. Procunier,* 417 U.S. 817, 822 (1974)); *see also Youngberg v. Romero,* 457 U.S. 307, 322, 102 S.Ct. 2452, 73 L.Ed.2d 28 (1982) (holding civilly detained persons must be afforded "more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed

to punish"). In order to establish a cause of action under the Free Exercise Clause, a civil detainee must show that a restriction that impeded his ability to practice his religion was not " 'reasonably related to legitimate penological interests.' " *Alvarez v. Hill,* 518 F.3d 1152, 1156 (9th Cir.2008) (quoting *Turner v. Safely,* 482 U.S. 78, 89, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987)). [2]

Defendants contend that they are entitled to summary judgment because Plaintiff has failed to establish, as he must, that the alleged desecration of his religious materials burdened his ability to practice his religion. *See Sanders v. Ennis-Bullock,* 316 Fed. Appx. 610, 611 (9th Cir.2009) (noting that, following *Shakur,* prisoners must still show that a regulation substantially burdened the practice of his religion). The Court agrees. Absent some evidence that Defendants' conduct interfered with his ability to practice his religion, summary judgment is warranted.

Plaintiff completely fails to show how having his religious items placed on the floor constituted a substantial burden on his ability to practice his religion. *See Shakur,* 514 F.3d at 885 (holding proper focus of the free exercise inquiry is whether the prison regulation substantially interfered with a tenet the prisoner "sincerely believes ... is consistent with his faith"); *Hensley v. Kampshaefer,* 2009 WL 69074, at *3 (W.D.Ky.2009) (concluding that prisoner did not allege that officials' conduct prevented him from practicing his religion where he only alleged that officials disrespected or dishonored his religious materials). This was his burden. *See Sanders,* 316 Fed. Appx. at 611. Plaintiff's failure to present admissible evidence on this element of his case mandates summary judgment for Defendants. *See Celotex,* 477 U.S. at 322-23. [3]

C. *Qualified Immunity*

Because the Court concludes that Defendants' conduct did not violate the First Amendment, the Court need not and does not reach Defendants' qualified immunity defense. *See Clement v. Gomez,* 298 F.3d 898, 904 (9th Cir.2002).

III.

RECOMMENDATION

For all of the foregoing reasons, IT IS RECOMMENDED that the Court issue an Order (1) approving and adopting this Report and Recommendation, and (2) granting Defendants' motion for summary judgment.

All Citations

Not Reported in F.Supp.2d, 2010 WL 1407851

Footnotes

1 Because the TAC is not verified, the Court is relying on allegations of fact contained therein only if they are not contradicted by Defendants' declarations. *See Shroeder v. McDonald,* 55 F.3d 454, 460 (9th Cir.1995) ("A verified complaint may be used as an opposing affidavit under Rule 56.").

2 Defendants argue that the proper inquiry is whether they "burdened the practice of [Plaintiff's] religion by preventing him from engaging in conduct mandated by his faith, without any justification reasonably related to legitimate penological interests ." (Motion at 12.) That is no longer the test. *See Shakur v. Schriro,* 514 F.3d 878, 884-85 (9th Cir.2008).

3 Though Plaintiff does not explicitly allege that Defendants violated his rights under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), the Court has considered RLUIPA in granting Defendants' motion, as it must. *See Alvarez,* 518 F.3d at 1157 (holding that a prisoner need not specifically allege that his rights were violated under a specific statute, i.e. RLUIPA, where he alleged a violation of his free exercise rights). Like his First Amendment claims, however, Plaintiff has not presented any evidence that Defendants violated his rights under RLUIPA, which is his burden, and, therefore, Plaintiff does not have a cause of action under RLUIPA, either. *Celotex,* 477 U.S. at 322-23; *see also Warsoldier v. Woodford,* 418 F.3d 989, 994 (9th Cir.2005) (noting that plaintiff bears initial burden under RLUIPA of showing the prison regulation constituted a substantial burden on the exercise of religious beliefs). Plaintiff's claims for injunctive relief also fail because he has not raised any viable substantive claims and, even if he did, he has been transferred to a new facility and, therefore, injunctive relief is no longer available.