IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JEFFREY EBERLE, *et al.*,

Plaintiffs,

v. **Case No. 2:03-CV-272**
MAGISTRATE JUDGE KING

REGINALD WILKINSON, *et al.*,

Defendants.

OPINION AND ORDER

Plaintiff Weisheit ["Weisheit"] challenges in this action three convictions by the Rules Infraction Board ["RIB"] as violative of his rights under the First Amendment to the United States Constitution. On July 15, 2010, this Court issued an *Opinion and Order*, Doc. No. 424, granting Defendants' *Motion for Summary Judgment* on Weisheit's claims. Doc. No. 343. This matter is now before the Court on Weisheit's *Motion to Reconsider* the Court's decision with respect to one of those convictions. Doc. No. 429.

Motions for reconsideration are "extraordinary in nature and, because they run contrary to notions of finality and repose, should be discouraged." *Phelps v. Economus*, No. 4:06-CV-543, 2006 WL 1587389 at *1 (N.D. Ohio June 7, 2006) (citation omitted). Motions for reconsideration should not be used as a substitute for appeal nor should they be used as a vehicle for mere disagreement with a district court's opinion. *Id.* There are three circumstances in which a court may reconsider one of its earlier decisions: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error to

prevent manifest injustice. *Id.*, citing *Bermingham v. Sony Corp. of America, Inc.*, 820 F.Supp. 834, 856 (D. N.J. 1992). It appears to the Court that Weisheit takes the position that the Court's decision was erroneous and that reconsideration is necessary to prevent manifest injustice.

Weisheit seeks reconsideration of the Court's decision with respect to his RIB conviction for engaging in unauthorized group activity. As the Court stated in its earlier *Opinion and Order*, Weisheit was charged with and convicted of violating Rule 31, which prohibits unauthorized group activity. That charge arose out of Weisheit's placement of three Odinist runes, associated with the Asatru religion, and the letters "FTW" on his prison sheets and towels. *See* Doc. No. 424, at 6. That conviction was reversed on appeal to the Warden, who reasoned that Weisheit should have been charged – not with a violation of Rule 31 – but with a violation of Rule 15, which prohibits malicious destruction, alteration or misuse of property. *Id.*

In considering Weisheit's claim, this Court held that, although the initial conviction was later reversed, there was "some evidence" to support the charge that he had engaged in unauthorized group activity; specifically white supremacist activity. As the Court observed, prison officials perceived the letters "FTW" to mean "forever truly white." The Court concluded that placement of these letters on sheets and towels, which circulate through the prison laundry system and which are viewed by other inmates working in the laundry area, amounted to "some evidence" that Weisheit had engaged in unauthorized group activity. *Id.*

In moving for reconsideration of the Court's decision, Weisheit argues that his placement of runes associated with the Asatru religion on inmate property is permissible under the First Amendment. In support of this argument, Weisheit cites the *Consent Decree* in *Miller v. Wilkinson*, 2:98-CV-275 (S.D. Ohio April 19, 2010).

The Court notes at the outset that, in convicting Weisheit of violating the unauthorized group activity rule, the RIB focused on his placement of the letters "FTW" on prison sheets and towels. The evidence does not establish that the conviction was based on Weisheit's participation in the Asatru religion. Moreover, the Court does not read the *Consent Decree* in *Miller* to authorize inmates in defacing prison sheets and towels – even with symbols of the Asatru religion. The *Consent Decree* identifies specific religious articles that inmates may possess in connection with Asatru worship. *Id.*, at § III, ¶ A. The *Consent Decree* also outlines the parameters of group worship and participation in group religious study. *Id.*, at ¶¶ E, G. The *Consent Decree* simply cannot be read to permit inmates to deface prison property.

The participation by an Ohio inmate in the Asatru religion does not constitute unauthorized group activity. However, in this case, the RIB conviction was not based on Weisheit's participation in any religious activity; rather, his conviction was based on his perceived participation in white supremacist activity, which is not protected under the First Amendment.

In his *Motion to Reconsider*, Weisheit also takes issue with the Court's failure to determine whether the punishment imposed for defacing his prison sheets and towels was the "least restrictive means" for purposes of the Religious Land Use and Institutionalized Persons Act of 2000 ["RLUIPA"], 42 U.S.C. § 2000cc, *et seq.* The statute provides, in relevant part:

> No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution . . . even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person -
>
> (1) is in furtherance of a compelling governmental interest; and
>
> (2) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc-1(a).

Again, in the Court's view, Weisheit's act of defacing prison property was not a religious exercise for the purposes of RLUIPA. Thus, there is no reason for the Court to consider whether any punishment imposed on Weisheit in connection with that misconduct violated RLUIPA.

For these reasons, Weisheit's *Motion to Reconsider* the *Opinion and Order,* Doc. No. 424, granting summary judgment with respect to Weisheit's conviction for unauthorized group activity, **Doc. No. 429**, is **DENIED**.

October 14, 2010
DATE

s/ Norah McCann King
NORAH McCANN KING
UNITED STATES MAGISTRATE JUDGE