

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

TIMOTHY JOHN SMITH, #743621 §
VS. § CIVIL ACTION NO. 6:17cv073
BRYAN COLLIER, ET AL. §

ORDER OF DISMISSAL

Plaintiff Timothy John Smith, an inmate confined in the Texas prison system, proceeding *pro se*, filed the above-styled and numbered civil rights lawsuit pursuant to the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc-1. Defendants Collier Catoe, and Cooper filed a motion for summary judgment (Dkt. #54). Mr. Smith filed his response (Dkt. #59). The complaint was referred to United States Magistrate Judge K. Nicole Mitchell, who issued a Report and Recommendation (Dkt. #67) concluding that Defendants’ motion for summary judgment (Dkt. #54) should be granted in part and the remainder of Mr. Smith’s claims should be dismissed as moot. Mr. Smith has filed objections (Dkt. #70).

Facts of the Case

The complaint was filed on February 6, 2017. Mr. Smith complained that TDCJ’s grooming policy pertaining to religious beards prevented him from shaving his neck and maintaining his mustache. He also complained that TDCJ’s razor supply policy prevented him from receiving a free, weekly razor to shave his body hair because he has a religious beard. Mr. Smith sought prospective injunctive relief in the form of being able to: (1) shave his neck hair and

trim his mustache above his lip line and at the corners of his mouth, and (2) receive a free, weekly razor to shave his armpits, the hair above his penis, and his testicle hair.

Report and Recommendation

After reviewing the summary judgment evidence, the Magistrate Judge found that TDCJ has changed its policy regarding the provision of weekly razors to inmates who wore beards for religious purposes in March 2017, thereby rendering Mr. Smith's weekly razor claim moot. The Defendants also provided summary judgment evidence that any failure to provide Mr. Smith with a weekly razor after March 2017 was because of a supply shortage and not because of any policy prohibiting the provisioning of weekly razors to inmates with religious beards. The Magistrate Judge recommended that the Defendants' summary judgment motion be granted in part and Mr. Smith's weekly razor claim be dismissed as moot

The Magistrate Judge also found that Mr. Smith's sculpting claim should be dismissed as moot. In *Burley v. Stephens, et al.*, No. 6:13-cv-601, a case that was pending before this court, TDCJ changed its grooming policy and religious beard policy, effective December 1, 2017. Under the new policy, the annual shaving requirement was discontinued and inmates may trim their religious beards and mustaches in accordance with their religious beliefs. As such, Mr. Smith's religious sculpting claim became moot.

Objections

Mr. Smith has filed objections (Dkt. #70). Mr. Smith's first and second objections seem to pertain to the recommendation that this suit be dismissed with prejudice. As Mr. Smith's claims are moot, it is within the discretion of this court to enter judgment with prejudice.

Mr. Smith's third objection requests that the court not levy a strike pursuant to 28 U.S.C. § 1915(g) against him. The Magistrate Judge did not recommend that the court levy a strike against Mr. Smith. The court does not intend to levy a strike pursuant to 28 U.S.C. § 1915(g) in this case.

Mr. Smith's final objection suggests that this court should publish this case. Mr. Smith's objections lack merit.

Conclusion

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Mr. Smith to the Report, the court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and Mr. Smith's objections are without merit. Therefore, the court adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the court. It is accordingly

ORDERED that Mr. Smith's complaint is **DISMISSED** as **MOOT**. It is finally

ORDERED that all motions not previously ruled on are **DENIED**.

So **ORDERED** and **SIGNED** this **1** day of **March, 2018**.



Ron Clark, United States District Judge