

Roberts v. Hofmann, No. 211-4-08 Wncv (Toor, J., Feb. 13, 2009)

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STATE OF VERMONT
WASHINGTON COUNTY, SS

JASON ROBERTS,
Plaintiff

v.

ROBERT HOFMANN,
Defendant

SUPERIOR COURT
Docket No. 211-4-08 Wncv

RULING ON MOTION TO DISMISS

This case is brought by an inmate seeking the right to possess a Satanic Bible in his cell. He alleges that the denial of that right constitutes a violation of his right to the free exercise of religion, and a violation of the Religious Land Use and Institutionalized Persons Act , 42 U.S.C. § 2000cc-1.¹

Defendant is the Commissioner of the Department of Corrections. He moves to dismiss, arguing that there is no First Amendment right to possess a Satanic Bible, and that the complaint fails to state a claim for violation of the Act. The Commissioner assumes for purposes of the motion that Satanism is a religion, that Roberts is a Satanist, and that depriving him of the Satanic Bible infringes on his religious beliefs. What the Commissioner argues is that even assuming all of those facts to be true, the restriction is

¹ After the motion to dismiss was filed, Roberts moved for leave to file an amended complaint. Defendant does not object. The court therefore grants the motion. This ruling will be addressed to that amended complaint.

a violation of neither the First Amendment nor the Act. The court will therefore address only those limited issues.

Because this is a motion to dismiss, the court must presume for now that the factual allegations of the complaint could be proved. Those are, in sum, that Roberts is a Satanist, that he has previously been allowed to keep a Satanic Bible in his cell and nothing terrible happened; that “he admits that while some language in the Satanic Bible may be violent, this language is symbolic, not to be taken literally;” that he “has no plans to carry out any violence in the name of Satanism;” that he will promise to keep the book in his cell and away from other inmates; and that he cannot practice his religion without it. Amended Complaint ¶¶ 3-16. He also admits that he is incarcerated for a crime of violence, Aggravated Domestic Assault. *Id.* ¶ 2. He adds that other religious groups are allowed to have religious books and other items in the prison, including Native Americans, Christians, Muslims, Wickens and Odinists (whom he describes as believing in white supremacy).

The First Amendment Claim

Inmates in prison do not lose their First Amendment rights. However, prison officials may impinge upon those rights if the restriction is “reasonably related to legitimate penological interests.” Turner v. Safley, 482 U.S. 78, 89 (1987).

In determining what meets that test, several factors may be considered. Turner, 482 U.S. at 89-91. Those include whether there is a rational connection between the restriction and a legitimate government interest, whether the affected inmates have other means of exercising their right, the impact of not having such a restriction, and whether there are “ready alternatives” to address the prison’s needs. *Id.*

Although the vast majority of courts in other jurisdictions appear to have favored the prisons' side, there are cases going both ways on the issue of an inmate's right to possess the Satanic Bible. *Compare*, Hendrickson v. Caruso, 2008 WL 623788 (W.D. Mich., March 4, 2008) *with* Semla v. Snyder, 2006 WL 1465558 (S.D. Ill. May 24, 2006).

The problem in this case is that – in contrast to many cases cited by the parties – the Commissioner has brought this not as a summary judgment motion, with evidence explaining the basis for the restriction imposed by the prison, but as a motion to dismiss. It is true that some other courts have quoted portions of the Satanic Bible that suggest that it might well reasonably be restricted by, for example, a prison ban on materials promoting violence. Those decisions, however, do not give the court a basis on which to rule as a matter of law that Roberts' allegations do not state any claim at all.

The court does not have before it any policy, regulation, directive, or decision with regard to why the prison here barred Roberts from possessing the book. In the absence of such factual material, the court cannot possibly weigh the factors required by Turner. The motion to dismiss the First Amendment claim is therefore denied.

The Religious Land Use and Institutionalized Persons Act

The Religious Land Use and Institutionalized Persons Act (“the Act”) declares that if the government imposes a substantial burden on a prisoner's exercise of religion, it must be “in furtherance of a compelling governmental interest” and also “the least restrictive means for furthering” that interest. 42 U.S.C. § 2000cc-1. As noted above, the court does not reach the question of whether Satanism is a “religion” because the pending motion presumes, *arguendo*, that it is.

The court's earlier discussion of the constitutional claim essentially disposes of this aspect of the motion as well. Absent evidence of what "compelling governmental interest" the prison was attempting to further, and why they believe that this is the least restrictive way to address the issue, the court cannot determine the application of the Act. The court cannot rule based merely on its own speculation about what the prison was doing.

Order

A status conference will be scheduled to determine a schedule for resolution of this case by trial or summary judgment.

Dated at Montpelier this 13th day of February, 2009.

Helen M. Toor
Superior Court Judge