



COMMANDER'S LOG

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Religious “Sincerity” Tests and Inmates’ Rights Under the First Amendment

QUESTION: Can detention facilities limit religious accommodations to “sincere” believers?

ANSWER: Yes, as long as the “means” used to test religious sincerity are permissible. Requiring inmates to possess specific, physical items of religious faith as proof of belief is generally impermissible, especially when there is other evidence that an inmate’s beliefs are sincere.

CASE: *Gary Wall v. James Wade, Food Service Manager, ROSP, et al.*
United States Court of Appeals (4th Circuit), Decided December 11, 2013

The Background: Gary Wall was a state prisoner housed at Red Onion State Prison (“ROSP”) in Pound, Virginia. He is member of the Nation of Islam. As such, Wall was allowed to observe the holy month of Ramadan while in state custody in 2008 and 2009. To accommodate Ramadan observance, prison officials provide participating inmates with special meals served before and after sunset. While at ROSP, Wall also received “common fare” meals, which satisfied his religious beliefs.

Prior to 2010, Muslim inmates at ROSP simply had to sign up to participate in Ramadan. In 2009, approximately half of the inmate population signed up. ROSP staff later determined that a significant number of the participating inmates were not, in fact, practicing Muslims. As a result, ROSP devised a new eligibility practice for 2010: in addition to signing up, inmates had to provide some physical indicia of Islamic faith, such as a Quran, Kufi, prayer rug, or written religious material obtained from the prison Chaplain’s office. ROSP inmates who did not have such materials or refused to acquire them were deemed insincere in their religious beliefs and were prohibited from participating in Ramadan.

Wall was one of the inmates who was not allowed to participate. After initially signing up, Wall was asked by James Wade, Food Services Manager, C. Selyers, Food Services Supervisor, and J. Stallard, Counselor at ROSP, to provide physical evidence of the sincerity of his beliefs in accordance with the new policy. Wall stated that all his belongings, including his articles of faith, had been lost during his transfer to ROSP. He showed Wade a state court judgment against the Commonwealth as proof that VDOC had lost his possessions. Wall also produced documents showing that he was receiving common fare meals in accordance with his faith, and he informed the officers that he had observed Ramadan in 2008 and 2009. Despite this, Wade responded, “that don’t mean anything,” and instructed Stallard and Selyers to remove Wall from the Ramadan list. Wall filed an informal complaint but it was denied by ROSP.

On the first morning of Ramadan in August 2010, Wall did not eat breakfast and concealed a portion of his meal in his cell to save until after sunset. ROSP staff found the food and threatened to charge him with possessing contraband. Faced with choosing between starvation and sanctions, Wall ate

during the day and violated his religious beliefs. He then filed a formal grievance which was also denied. Ultimately, Wall was not allowed to participate in Ramadan in 2010.

The Lawsuit: Wall filed suit under the institutionalized persons' provisions of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). He alleged that his rights under the First Amendment had been violated. Wall sought a declaratory judgment, an injunction against further infringement of his religious liberty, and nominal, compensatory, and punitive damages. The defendants moved for summary judgment and their motion was granted. Wall's claims for a declaratory judgment and an injunction were deemed to be moot because of his transfer from ROSP to a lower-security facility and because of ROSP's subsequent abandonment of its policy of requiring prisoners to possess physical indicia of faith in order to participate in Ramadan or other religious observations. As to the money damages claims, the defendants were granted qualified immunity. Wall appealed.

The Appeal and the Decision:

The Claim for an Injunction: As to the equitable claims for a declaratory judgment and an injunction being moot, the court observed: "It is well established that a defendant's voluntary cessation of a challenged practice moots an action *only if subsequent events made it clear that the allegedly wrongful behavior could not reasonably be expected to recur.*" This burden lies with the party asserting mootness. Here, the court had no trouble in finding that the defendants had failed to meet their burden. In other words, the ROSP defendants failed to convince the court that it was "absolutely clear" the 2010 Ramadan policy would not be reinstated at some time in the future. The court said, "Unsubstantiated observances in their appellate brief aside, the defendants have failed to put forth been a single piece of evidence establishing that the practice of requiring physical indicia of faith has been terminated once and for all."

The Claims for Money Damages: The appeals court first determined that money damages were not recoverable against state officials under RLUIPA. Therefore, Wall's only relief under RLUIPA was equitable, not monetary. This ruling, however, had no impact on Walls' claims under 42 U.S.C. § 1983 for denial of religious freedom. As to those claims, the court held that the defendants were *not* entitled to qualified immunity. In essence, the court ruled that the 2010 Ramadan policy as applied to Wall was a clear violation of his established rights under the Free Exercise Clause of the First Amendment, which forbids the adoption of laws, policies, or practices designed to suppress religious beliefs or practices. The Free Exercise Clause provides protection for all, including prisoners. Here, the policy was strictly applied against an inmate who had exhibited numerous signs that he was, in fact, a practicing Muslim who was merely seeking to exercise his genuinely held beliefs. By applying the policy so rigidly, the restriction lost whatever valid connection there may have been to ROSP's stated interest in adopting it.

NOTE: Keep in mind that free exercise restrictions that are reasonably adapted to achieve a legitimate penological objective are permissible. In other words, prison officials may restrict an inmate's religious practices subject to a "reasonableness" test that accords substantial deference to the professional judgment of correctional officials and officers. A prison regulation is reasonable and thus permissible if it satisfies four factors: (1) whether there is a valid, rational connection between the prison regulation or action and the interest asserted by the government; (2) whether alternative means of exercising the right remain open to prison inmates; (3) what impact the desired accommodation would have on security staff, inmates, and the allocation of prison resources; and (4) whether there exist any obvious, easy alternatives to the challenged regulation or action. Finally, prison officials *may* question whether a prisoner's religiosity, asserted as a basis or a requested accommodation, is authentic, and detention facilities may limit religious accommodations to sincere

believers. Here, however, it was the “means” used to test religious sincerity that was unconstitutional.

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