

2005 WL 348314

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United States District Court,
D. Rhode Island.

Wesley SPRATT, Plaintiff, pro se

v.

A.T. WALL, Director, Rhode Island Department of
Corrections, and the Rhode Island Department of
Corrections, Defendants.

No. C.A.04-112 S. | Jan. 18, 2005.

Attorneys and Law Firms

Wesley Spratt, for Plaintiff, pro se.

Patricia Ann Coyne-Fague, for Defendant.

Opinion

Report and Recommendation

HAGOPIAN, Magistrate J.

*1 Wesley Spratt (“Spratt” or “plaintiff”), *pro se*, an inmate legally incarcerated at the Rhode Island Department of Corrections, Cranston, Rhode Island, filed a Complaint pursuant to 42 U.S.C. § 1983 alleging a violation of his First and Fourteenth Amendment rights. Plaintiff also alleges a violation of 42 U.S.C. § 2000cc. Spratt names as defendants the Rhode Island Department of Corrections and its Director, A.T.Wall.

Currently before the Court are the motions of the plaintiff for a preliminary injunction and for “immediate injunctive relief.” Defendant Wall has objected. These matters have been referred to me pursuant to 28 U.S.C. § 636(b)(1)(B) for a report and recommendation. For the reasons that follow, I recommend plaintiff’s motions for a preliminary injunction and for “immediate injunctive relief” be denied. I have determined that a hearing is not necessary.

Background

Wesley Spratt is a legally incarcerated individual confined at the Rhode Island Department of Corrections, Adult Correctional Institutions (“ACT”). While housed in the maximum security unit, Spratt began to lead and preach at Christian religious services within that unit for

other inmates, with the apparent knowledge of officials at the Department of Corrections. In October of 2003, correctional officers and defendant Wall ended this practice, forbidding Spratt from leading or preaching at religious services for other inmates. The defendant rested this restriction on the basis of maintaining institutional security.

Spratt brought suit pursuant to 42 U.S.C. § 1983 challenging the restriction and citing an infringement of the First and Fourteenth Amendments. Plaintiff also alleges a violation of Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc. Currently before the Court are plaintiff’s motions for injunctive relief. Defendant Wall has objected.

Discussion

To determine the appropriateness of granting preliminary injunctive relief, the First Circuit employs a quadripartite test, taking into account (1) the potential for immediate, irreparable injury; (2) the likelihood of success on the merits of the case; (3) the relevant balance of hardships if the injunction does not issue; and (4) the effect on the public interest of a grant or denial of the motion. *See Narragansett Indian Tribe v. Guilbert*, 934 F.2d 4, 5 (1st Cir.1991). A failure to demonstrate one of the requirements necessitates a denial of the motion for preliminary injunctive relief.

Here, however, plaintiff has failed to address any aspect of the quadripartite test. Plaintiff also does not indicate exactly he is seeking by way of the instant motions. Thus, this Court is unsure what type of Order it would be issuing, or the substance of that Order, if the plaintiff were entitled to relief.

Notwithstanding the above mentioned deficiencies in the instant motions, plaintiff can not show a likelihood of success on the merits of his case. First, with regard to plaintiff’s constitutional claims, plaintiff does not have a First or Fourteenth Amendment right to lead or preach at religious services at the ACI for other inmates. *See Spratt v. Wall*, C.A. No. 04-112 S, M.J. Hagopian, Report and Recommendation, January 11, 2005, at 4-8. And second, with respect to plaintiff’s RLUIPA claim, the constitutionality of this statute is debatable. *See Cutter v. Wilkinson*, 349 F.3d 257 (6th Cir.2003) (finding RLUIPA unconstitutional); *But see Madison v. Ritter*, 355 F.3d 310 (4th Cir.2003) (finding RLUIPA constitutional); *Charles v. Verhagen*, 348 F.3d 601 (7th Cir.2003) (same); *Mayweathers v. Newland*, 314 F.3d 1062 (9th Cir.2002) (same). Indeed, the U.S. Supreme Court granted certiorari in *Cutter v. Wilkinson*, 349 F.3d 257, *cert.*

Spratt v. Wall, Not Reported in F.Supp.2d (2005)

granted 125 S.Ct. 308 (Oct. 12, 2004)(No.03-9877), to resolve the issue.

*2 Since plaintiff can not demonstrate a First and Fourteenth Amendment violation, and since there is some constitutional doubt cast upon the viability of RLUIPA, plaintiff can not demonstrate a likelihood of success on the merits of this case.

Conclusion

Accordingly, I find that plaintiff's motions for a

preliminary injunction and "immediate injunctive relief" should be denied. Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of Court within ten days of its receipt. Fed.R.Civ.P. 72(b); Local Rule 32. Failure to file timely, specific objections to this report constitutes waiver of both the right to review by the district court and the right to appeal the district court's decision. *United States v. Valencia-Copete*, 792 F.2d 4 (1st Cir.1986)(per curiam); *Park Motor Mart, Inc. v. Ford Motor Co.*, 616 F.2d 603 (1st Cir.1980).