

Eastern District of Arkansas
Western Division

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

NOV 03 2015

JAMES W. McCORMACK, CLERK
By: dBic DEP CLERK

Gregory Holt #129666
(Abdul Maalik Muhammad)

Plaintiff

vs.

Case No. 5:15-cv-00164-BSM

Wendy Kelley, Director of the
Arkansas Department of Correction, et al. Defendants

Motion To Reopen For The Limited
Purpose Of Determining If Plaintiff
Was Discriminated Against Based On
This Case And His Religious Ideology

Comes now the Plaintiff and for his Motion states the following:

(1) Plaintiff brings this motion based on the facts and circumstances set out below:

The Arkansas Department of Correction operates at the Cummins Unit a program known as the Principles And Applications For Life program or PAL. This program purports to be "faith based" allowing different religious ideals and ideologies and allegedly allowing for the presentment of those belief systems through speakers

and curriculum, The truth about this program is far different in that, while receiving state funding, it does not allow for other non-Christian beliefs to be voiced or heard like Plaintiff's. The program is voluntary. In any event, Plaintiff had heard through other PTL participants that there was one class that he might find beneficial called "Upcoming Anger" Plaintiff knew that this was a problem area so he asked to be accepted into the program, which he was in August 2015. The Chaplaincy Department knew at the outset what Plaintiff's ideological leanings were as well as the fact that he was a devout Salaf who had won the right to wear his beard and had been granted an accommodation to wear a long beard and head hair.

Before Plaintiff entered the PTL, he was talked to by senior chaplain Jim Babcock who advised Plaintiff not to educate the men in the program in how to file for accommodations to the grooming policy or to advocate Islam. Plaintiff ignored both requests and even secured counsel for 2 of the men in the program who had been denied accommodations on special grounds. After entering PTL, Plaintiff eventually discovered that the program was not inclusive at all, but rather dominated by fundamentalist Christians with all other viewpoints stifled or highly discouraged, those who spoke out regarding activity in the program were dismissed or forced out by fat or became so discouraged that they signed out. One such person was Timothy Howard, represented

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by Patrick Demer, Mr. Howard had questioned the
overbearing ways of the chaplains and had rightly
questioned some of the veracity of the claims
made by volunteer speakers known as CRAs or
Certified Religious Assistants.

Plaintiff eventually made requests that an
Islamic speaker be allowed to come into the

"faith based" program and speak once a week after
speakers vacated came open. It was denied on
the grounds that such a speaker "would raise the
temperature in the room." One again, alternative
venues were denied. The chaplain eventually
made a concession to allow Plaintiff to speak

but placed restrictions on what he could say
and asked to read the material beforehand,
which was not done to other student speakers,
Plaintiff was specifically told that he could not
"teach the 5 pillars of Islam or any Islam at all."

Plaintiff made himself heard in various ways
by educating individual students in the benefits
of Islam, and challenging speakers in areas that
most had no knowledge of even though they claimed
to do so such as in the areas of race, slavery, how
old the Earth was, apocryphal vs. canonical books
of the Bible, and whether Prophet Isa (Jesus) and
Prophet Adam (I) were dark skinned, Plaintiff made
a point of trying to mentally resurrect dead minds
and open Caucasian students to the reality that the
Original Islamic man was black, such was evidently
not appreciated by the white chaplain staff.

Chaplain Wilson advised the class that no one could wear

a religious emblem or medal on a chain on the outside

of the clothing. One student, Joe Goffis, advised Chaplain

Wilson that this order was inconsistent with ADC policy

allowed for the wearing of a religious emblem on a stake

issued I.D. chain. Chaplain Wilson told Mr. Goffis that if

he wanted to see how serious he was to just keep wearing

it and he would write a disciplinary. Later that same

day, Mr. Goffis was ejected from the program and was

written a disciplinary. Plaintiff wrote a statement on Mr.

Goffis' behalf laying out what had transpired and

wrote in the statement that he anticipated retaliation

for writing the statement up to and including retaliatory

dismissal from the program.

On 10-29-15, without warning, Plaintiff was dismissed

from the program. Plaintiff refused to comply with what

he perceived to be an unlawful order. Plaintiff was

placed into Administrative Segregation, but was released

on 10-30-15. On 10-30-15, Plaintiff filed a grievance seeking

answers as to why he had been dismissed, to no avail.

On 11-15, Plaintiff talked to Chaplain Ault who

is the chaplain overseeing the PAL Program, Chaplain

Ault advised that Plaintiff was released from the

program because the chaplains were concerned that

Plaintiff was becoming "increasingly agitated" due to

viewing events in the Middle East unfold on television,

so they thought it prudent to remove Plaintiff from

the program and then advise him of the reasons after

the fact. There is just one problem with this

argument; Plaintiff never watched the news in the PAL Program for this very reason. He only watched Major League Baseball. This was common knowledge. Individuals in the program attempted on several occasions to provoke Plaintiff into a violent reaction, but he did not respond.

Given the foregoing, Plaintiff alleges that he was dismissed from the PAL Program for (1) signing a witness statement critical of Chaplain Wilson; (2) educating his fellow inmates about how to seek grooming accommodations; (3) advocating unpopular viewpoints and (4) practicing Islam in a barracks masquerading as faith based. Not one dispositive action can be remotely pointed to that would justify dismissal other than retaliation. Such action calls for the court to take a closer look at whether this qualifies as retaliation for exercising a First Amendment right.

- (2) In order to sustain a claim for retaliation, Plaintiff must show three (3) things: (1) That he engaged in conduct protected under the First Amendment; (2) The defendant or individual took some retaliatory action sufficient to deter a person of ordinary firmness in Plaintiff's position from speaking again; and (3) a causal link exists between the exercise of a constitutional right and the adverse action taken against him. (Banks vs. New York, 515 F. Supp. 2d 89, D.D.C., 2007) [citing Rausser vs. Horn, 241 F.3d 330, 3rd Cir. 2001]; (Friedl vs. City of New York, 210 F.3d 79, 2nd Cir. 2001)

(a) First, Plaintiff was engaging in conduct protected by the First Amendment. Plaintiff helped students in the program research and file grievances in order to seek accommodations to the grooming policy and to seek legal counsel in the event of a denial. This is a protected right, given that inmates are allowed to assist other inmates in the preparation and filing of legal documents, in the absence of a legal program. (Johnson v. Avery, 393 U.S. 483, 1969); (Bear v. Laufer, 305 F.3d 809, 814 (7th Cir. 2002)) Further Plaintiff cannot be transferred for assisting another in filing petitions or lawsuits (Thaddeus-X vs. Blatter, 175 F.3d 378, 6th Cir. 1999)

Secondly, it is undisputed that Plaintiff has the right to practice his religious beliefs, no matter how unpopular and such practice is protected by the First Amendment, and the Fourteenth Amendment. This needs no elaboration.

Plaintiff can express political beliefs and/or religious beliefs even if the prison administration disagrees with such beliefs. (Sostre v. McInnis, 492 F.2d 178, 2d Cir. 1971); (Szeberdy v. Oswald, 341 F. Supp. 571, S.D.N.Y. 1972) It is no secret that Plaintiff holds militant beliefs and has expressed support in the past for violent armed struggle in defense of Islam. Plaintiff has vigorously disagreed with some of the ideology and teachings of the CRA volunteers, including their support of an Israeli homeland and disagreed with students making

prayer requests supporting same, but it was a productive disagreement that promoted robust debate, such did not justify dismissal from the program. It was an exaggerated response to a security concern and further was malicious in nature. Plaintiff has met the first prong of the analysis.

(b) The chaplains at the Cummins Unit dismissed Plaintiff from the PAL Program based on his advocacy and beliefs and due to the close proximity of his writing a statement supporting Mr. Griffiths. As has already been stated, Plaintiff was told by both Chaplain Babcock and Ault not to educate students in the program about filing paperwork seeking a grooming accommodation and further, was told by Chaplain Ault that he was dismissed from the program for his beliefs and advocacy of them and what they feared might happen. The PAL normally looks for a certain type of inmate, one who is compliant and in the prison hierarchy, those with certain types of offenses that render their place in general population less than safe. Any threat of a dismissal or transfer is sufficient to deter a person of ordinary firmness from speaking again or trying to imitate Plaintiff. As such, Plaintiff has met the second prong of the analysis.

(c) Plaintiff refers to 2(b) above to meet the third prong—a causal link exists between the exercise of a constitutional right and the adverse action taken against him. This is

sufficient to meet the third prong of the analysis,

- (3) Plaintiff asserts that cumulatively the actions taken by the chaplains was part of a campaign to harass the Plaintiff based on his Supreme Court win and as such this issue demands the court's attention. No one can point to any factor that would be dispositive in justifying dismissal from the program, Plaintiff has been no problem in general population. He came to the program seeking to work on certain issues and to learn new things as well as teach others. However, he ran into anti-Muslim bias and prejudice and hatred of him for being outspoken and knowledgeable. Such is shameful, and is not conducive to healthy understanding.
- (4) Plaintiff asks the Court to review these matters and make a declaration as to whether he was (1) retaliated against and (2) whether he faced discrimination in a job or program because of this case and his religious practices. This court can make these determinations based on Holmes vs. Artuz (1995 WL 634995, S.D.N.Y. 1995) and Bass vs. Santa Cruz Dept. of Corrections Sup'rs (1994 WL 618554, N.D. Cal. October 27, 1994) In Holmes vs. Artuz, the court allowed a First Amendment claim on the theory that the prisoner was retaliated against after complaining about unfair treatment for gay prisoners. The same applies here: Plaintiff spoke in defense of another inmate who was wrongly treated. The Court should intervene.

(5) Plaintiff would ask the Court to consider ordering him placed back into the program if the Court finds that he was in fact retaliated against.

(6) Ever mindful of additional retaliation for filing this motion, Plaintiff asks the Court to order that he not be transferred or otherwise harmed for seeking relief in this venue.

Wherefore, premises considered, Plaintiff prays that the Court grants his motion and for all other relief to which he may be entitled.

Respectfully submitted,

Gregory Holt
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Certificate of Service

I certify that I have served a copy of the foregoing to David Curran, Office of the Attorney General, and Professor Douglas Laycock and Attorney Patrick Benz by U.S. Mail with sufficient postage this and day of November, 2015.

Gregory Holt
Gregory Holt #129616
Abdul Mawlik Muhammad