

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ERVIN TRIPLETT,)	
)	
Plaintiff)	
)	
v.)	Civil No. 95-0143-B
)	
JOSEPH LEHMAN, et al.,)	
)	
Defendants)	

RECOMMENDED DECISION

Plaintiff, a Massachusetts prisoner formally housed at the Maine Correctional Institution [”MCI”], brings this action under 42 U.S.C. § 1983. In it, he alleges institutional discrimination on the basis of his religion. Plaintiff is a practicing Muslim.

On April 25, 1996, the undersigned issued a Recommendation that Plaintiff’s claims be dismissed with the exception of his claim for money damages for the loss of certain religious property. This remaining claim is the subject of Defendants’ Motion for Summary Judgment, now pending before the Court.

The Motion for Summary Judgment was filed on February 28, 1996. The time for objecting to the Motion has now expired and Plaintiff has not filed a response. In this District, a party's failure to timely respond to a motion is generally construed to waive objection to the motion. D. Me. R. 19(c). However, the Federal Rules of Civil Procedure require us to examine the merits of a motion for summary judgment regardless of the opposing party's failure to object. *FDIC v. Bandon Assoc.*, 780 F. Supp. 60, 62 (D. Me.

1991). Accordingly, we will examine the merits of Plaintiff's Motion for Summary Judgment based on Plaintiff's Statement of Material Facts, which read in their entirety as follows:

On May 3, 1995, Plaintiff was transferred to the Maine Correctional Institution - Warren (hereinafter "MCI - Warren"). At the facility from which he had been transferred, the Maine State Prison, the plaintiff had been allowed to have religious written materials, a prayer rug, and prayer beads. After the plaintiff wrote to the defendant, he was allowed to have the prayer rug at MCI -- Warren. In addition, the response from the defendant Commissioner referred the plaintiff to the librarian at MCI - Warren.

The librarian had been instructed by the Deputy Warden of MCI - Warren to obtain for any prisoner transferred to MCI - Warren, at no cost to the prisoner, the substantial equivalent of religious written materials he had prior to transfer and wished to continue to have at MCI - Warren. The librarian was instructed, if unable to get the materials donated, to use the facility's funds to purchase the materials. Shortly after his arrival at MCI - Warren, the librarian gave to the plaintiff a free Quran. To the librarian's recollection, the plaintiff did not request any other religious writings from him, but if the plaintiff had, the librarian would have obtained them for him.

The reason that prisoners transferred to MCI - Warren are given, at their request, substantially equivalent religious publications to those they had prior to their transfer is that no prisoner transferred to that facility is allowed to bring with him publications, regardless of their content. This is because it is common practice for prisoners to hide contraband in publications, and it is not possible to conduct a satisfactory search for such contraband without destroying the publication. For example, it is not uncommon for prisoners to hide drugs in book bindings and only by destroying the bindings can the drugs be detected.

No prisoner at MCI - Warren is allowed to have rosaries or other prayer beads. This is because the material holding the beads could be used by the prisoner in an attempt to strangle another prisoner or a member of the staff, with strangulation being a known method of prisoner attempts to kill. It is a quiet and quick method not requiring a face-to-face confrontation, and is also difficult for staff to stop because all the prisoner has to do is continue to apply pressure for a short period of time.

Prisoners at MCI - Warren are the most dangerous prisoners in the Maine Department of Corrections, and many of them have actually hurt other prisoners or correctional staff, have attempted to do so, threatened to do so,

or otherwise pose a risk of doing so. Because so many prisoners at that facility pose such a risk, it is not possible for any prisoner have prayer beads, lest even a prisoner who does not pose such a risk give them to another prisoner who does. This is a common practice amongst prisoners.

All these policies are applied uniformly regardless of religion, race, or other irrelevant factors.

Def. Mot. at 3-5 (record citations and footnotes omitted).

As Defendants argue, it is clear that Plaintiff cannot prevail on his claims regarding his prayer rug and written materials, as these have been provided to him. Remaining for resolution is Plaintiff's claim as to the prayer beads.

It is true that inmates do not forfeit their constitutional rights at the prison gate. *Bell v. Wolfish*, 441 U.S. 520, 545 (1979). However, prison regulations that infringe upon those rights survive legal scrutiny as long as they are shown to be “‘reasonably related to legitimate penological interests.’” *O’Lone v. Shabazz*, 482 U.S. 342, 349 (1987) (quoting *Turner v. Safley*, 482 U.S. 78, 89 (1987)). This relatively low threshold is intended to recognize the deference ordinarily afforded correctional administrators in matters of institutional safety. *Id.* (citing *Bell*, 441 U.S. at 562; *Turner*, 482 U.S. at 86-87).

The prohibition on prayer beads at MCI - Warren clearly survives the balancing test set forth in *O’Lone*. There is certainly a logical connection between a prohibition on prayer beads and the concern for inmate and staff safety. *Id.* at 350. Despite a lack of alternatives to prayer beads, the Muslim (and for that matter, Catholic) inmates at MCI - Warren are not deprived of “‘all means of expression’” of their religious beliefs. *Id.* at 352 (quoting *Turner*, 482 U.S. at 92). Finally, we have no doubt that accommodation of Plaintiff's request would

have a potentially severe impact on other inmates, given the ease with which the beads could be violently utilized. *Id.* In light of these factors, the ban on prayer beads is consistent with the Free Exercise Clause of the First Amendment.¹

Conclusion

Accordingly, I hereby RECOMMEND Defendants' Motion for Summary Judgment be GRANTED in its entirety.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated in Bangor, Maine on April 25, 1996.

¹ Defendants seek, in the alternative, judgment on the grounds that they are entitled to qualified immunity with respect to the regulation at issue. In light of our conclusion on the merits of Plaintiff's claim, the Court clearly finds Defendants' "actions could reasonably have been thought consistent with" Plaintiff's First Amendment rights. *Anderson v. Creighton*, 483 U.S. 635, 638 (1987).