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Paliotta v. State Dep't of Corrections, 133 Nev. Adv. Op. 58 (Sept. 14, 2017)

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CIVIL APPEAL: CONSTITUTIONAL LAW

Summary

The Court determined it must consider the sincere religious beliefs of the individual when evaluating claims under the Free Exercise Clause and the Religious Land Use and Institutionalized Persons Act (RLUIPA). It is improper to evaluate those claims under the centrality test, which attempts to determine if the individual's beliefs are central to a tenant of the religion in question. Once the sincere belief is shown, the courts must then fully examine the remaining considerations under the Free Exercise Clause and the RLUIPA.

Background

Appellant, Gilbert Jay Paliotta, is incarcerated at the Ely State Prison. Paliotta filed the necessary form to declare himself a Thelemist with the Department of Corrections. Paliotta then contacted the chaplain at the prison to arrange a traditional Egyptian diet that would be in accordance with his religious beliefs. The prison chaplain suggested that he should instead request a kosher diet: the diet available in the prison most suited to his needs. Paliotta submitted his request. Later that month, Paliotta submitted an additional request stating that he had not yet heard back regarding his initial request. A month later, he submitted a third request to follow-up on the initial request. This additional request outlined why he requested a kosher diet, and stated that it should be provided in accordance with his faith. The prison eventually denied these requests.

Paliotta submitted an informal grievance again requesting a religious diet. The prison again denied his request. The prison maintained that under the Department of Corrections regulations, a kosher diet was not included as a religious consideration for the Thelemist religion. Paliotta filed two additional grievances and challenged the denial because the prison was already providing kosher meals to some inmates who were not Jewish. Those grievances were also denied.

Paliotta filed suit against the Nevada Department of Corrections and the Warden, Renee Barker. In this suit, Paliotta argues that the denial of the religious diet violated the Free Exercise Clause of the First Amendment, RLUIPA, 42 U.S.C. §§ 2000cc, and the Equal Protection Clause of the Fourteenth Amendment. Both parties filed opposing motions for summary judgment. The district court granted the State's motion stating that the requested diet was not central to the Thelemic faith. Paliotta appealed.

Discussion

Free Exercise Clause and RLUIPA claims in general

In order to show a valid claim under the Free Exercise Clause, the plaintiff must show that that the "proffered belief [is] sincerely held; and that claim [is] rooted in religious belief, not in purely secular philosophical concerns."² However, both the inherent nature of confinement and

¹ By Anna Sichtung.

² Walker v. Beard, 789 F.3d 1125,1138 (9th Cir. 2015).

institutional objectives limit the protections offered to an inmate under the Free Exercise Clause.³ In comparison, in order to show a valid RLUIP claim, the plaintiff must show that they participate in a religious exercise, and that the State's actions have substantially burdened that exercise.⁴

Standard of review

District court orders granting summary judgment are reviewed de novo.⁵ The court must review all evidence in the light most favorable to the nonmoving party to determine whether there are any genuine issues of material fact.⁶

The district court erred in concluding that Paliotta's Free Exercise Clause claim failed as a matter of law

The district court determined that Paliotta was in fact sincere in his Thelemic beliefs, a point that the State did not dispute. The point at issue was whether the dietary request was related to those sincere religious beliefs.

Paliotta's dietary request was related to his sincere Thelemic beliefs

The State argued that Paliotta was simply trying to use the court to receive better food. They also argued that Paliotta's requests were insincere because he requested two completely different types of food on separate occasions. Paliotta contended that the requested diet was important to his faith, and that he only asked for a different modification due to the prison chaplain's suggestions.

In *Shakur*, the courts determined that only the sincerity of the individual's beliefs need to be considered when evaluating whether a claim falls under the Free Exercise Clause.⁷ Further, the court does not and should not consider whether that belief is a central tenant of the religion in question.⁸

Here, the district court determined that Paliotta's request for a kosher diet should be denied because consuming a kosher diet was not central to the Thelema religion. Therefore, Paliotta's Free Exercise claim failed. This was an error because the court evaluated the claim under the centrality test rather than the sincere belief test.

Paliotta established a prima facie showing that he believed the kosher diet was important to his faith. He showed a sincere belief that the diet was related to practicing his religion. Paliotta was therefore able to show that he was not only entitled to First Amendment protection, but also that his claims should have been evaluated under the Free Exercise Clause and the Equal Protection Clause.

The district court erred in concluding that Paliotta's RLUIPA claim failed as a matter of law

³ *Id.*

⁴ *Id.* at 1134.

⁵ *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

⁶ *Id.*

⁷ *Shakur v. Shriro*, 514 F.3d 878, 885 (9th Cir. 2008).

⁸ *Id.*

The district court incorrectly utilized the Free Exercise Clause analysis with the RLUIPA analysis stating that both failed as a matter of law. However, the two have different standards for establishing a prima facie case.

Under RLUIPA, the plaintiff must establish that he wanted to “engage in (1) a religious exercise (2) motivated by a sincerely held belief, which exercise (3) is subject to a substantial burden imposed by the government.”⁹ The purpose behind this to include a broad protection of religious exercise.¹⁰

The State conceded that Paliotta was sincere in his Thelemic beliefs, but maintained that the kosher or Egyptian diet was unrelated to those beliefs and so, not a religious exercise. Paliotta argued that the diet was a necessary part of his religion, and that the State was imposing a substantial burden on his religious practice by withholding the diet.

Paliotta’s dietary requests constituted a “religious exercise” under RLUIPA

The State argued that the requested diet was not a “religious exercise”. Paliotta was insistent that the diet was a “religious exercise” under his Thelemic religion. The parties bitterly disputed what constitutes a “religious exercise”.

A “religious exercise” is “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.”¹¹ In *Koger*, the courts applied that standard to another Thelemic inmate who was requesting an alternate diet.¹² That court determined that the modified diet was a “religious exercise rooted in sincerely held beliefs.”¹³

Here, Paliotta established a prima facie showing that he believed that the kosher diet was important to his sincerely held Thelemic beliefs. Also, Paliotta showed that the diet was a religious exercise in the furtherance of those sincerely held beliefs. Paliotta’s religion was the cause of his desire for the diet. Paliotta was able to show text from a Thelemic holy book which addressed dietary restrictions as well as historical evidence linking his beliefs with Judaism.

The broad nature of RLUIPA allows for individual interpretations of religions and individual practices of those religions. The district court was incorrect when it attempted to limit Paliotta's religious practice.

Paliotta’s religious exercise was substantially burdened by the State

The State maintained that the diet was directly related to a tenant of the Thelemic religion. Therefore, the State believed that the refusal to provide the meal was not a substantial burden on Paliotta’s ability to practice his religion. Paliotta argued that the State’s refusal to provide a kosher diet was a substantial burden on his ability to exercise his religion.

Under RLUIPA, the state may not “impose a substantial burden on the religious exercise” of an inmate.¹⁴ In *Warsoldier*, the court defines substantial burden as denying an individual a benefit which then forces that individual to act in a way that violates their beliefs.¹⁵

⁹ *Abdulhaseeb v. Calone*, 600 F.3d 1301, 1312 (10th Cir. 2010).

¹⁰ *Id.* at 1314.

¹¹ 42 U.S.C. § 2000cc-5(7)(A).

¹² *Koger v. Bryan*, 523 F.3d 789, 797 (7th Cir. 2008).

¹³ *Id.* at 798.

¹⁴ 42 U.S.C. § 2000cc-1(a).

¹⁵ *Warsoldier v. Woodford*, 418 F.3d 989, 995 (9th Cir. 2005).

Paliotta was forced to eat a diet that was not in compliance with his religion in order to meet his basic living needs. Unfortunately, this decision to eat in order to survive also made him violate his religious beliefs. This forced modification of his behavior was a substantial burden on Paliotta. The State prevented Paliotta from fully engaging in his religion. It is irrelevant that there is a question as to whether or not that diet is a known tenant to the religion. It is only relevant that the State's action forced Paliotta to violate his religious beliefs as he practices them. The State's denial of the requested diet was a substantial burden upon Paliotta's ability to practice his religion.

Issues unresolved in the district court

The district court erroneously granted summary judgment in favor of the State regarding Paliotta's Free Exercise Clause and RLUIPA claims. By doing so, the district court did not fully examine whether or not the denial of the kosher diet was related to legitimate penological interests.¹⁶ The district court also did not consider whether the denial of the diet was in support of a government interest and the least restrictive way of achieving that interest. Finally, the district court did not adequately consider Paliotta's Equal Protection Claim. Upon remand, the district court must address these issues that it failed to do so previously.

Conclusion

The Court determined that Paliotta provided a prima facie showing that his religious beliefs were in fact sincere beliefs related to the religion that he was actively practicing. Therefore, Paliotta was entitled to the protections offered under the Free Exercise Clause and RLUIPA. Accordingly, the district court erred when it dismissed Paliotta's case on a motion for summary judgment. The Court reversed the summary judgment and remanded the case for proper review of the all of the claims.

¹⁶ Walker, 789 F.3d at 1138.