

Hall v. Cooper

United States District Court for the Southern District of Alabama, Southern Division
June 1, 1999, Decided ; June 1, 1999, Filed
CIVIL ACTION 78-0552-P-C

Reporter: 1999 U.S. Dist. LEXIS 8765
CARL HALL, a/k/a, LORD DIVINE ALLAH, Plaintiff, vs.
ANDREW COOPER, et al., Defendants.

Prior History: [*1] Adopting As Modified Magistrate's Document of January 19, 1999, Reported at: [1999 U.S. Dist. LEXIS 9219](#).

Judges: Virgil Pittman, SENIOR UNITED STATES DISTRICT JUDGE.

Opinion by: Virgil Pittman

Opinion

ORDER ADOPTING REPORT AND RECOMMENDATION AS MODIFIED

Presently pending before this court are the Report and Recommendation of the Magistrate Judge ("R&R"), recommending that plaintiff's motion to cite for contempt be denied and that defendant's motion to terminate prospective relief be granted (Doc. 256); plaintiff's Motion for Special Order (Doc. 263; duplicated at Doc. 259); plaintiff's Objection to Report and Recommendation (Doc. 264; duplicated at Doc. 260); and plaintiff's Supplement to Objection (Doc. 265).

After due and proper consideration of all portions of this file deemed relevant to the issues raised, and a *de novo* determination of those portions of the Report and Recommendation to which objection is made, the Report and Recommendation of the Magistrate Judge, made pursuant to [28 U.S.C. § 636\(b\)\(1\)\(B\)](#), is adopted as modified herein as the opinion of this court.

First, the citation to the first sentence of footnote eight on page twelve should read, "[42 U.S.C. § 2000bb\(b\)](#)."

Second, this court writes briefly to address plaintiff's objections. Plaintiff's first objection ¹ is to [*2] that portion of the Report and Recommendation that finds that plaintiff has not presented "credible and sufficient evidence of a 'current and ongoing' violation of a federal right." (Doc. 256 at 16). Plaintiff contends that he has presented sufficient evidence of a "current and ongoing" violation and offers the affidavit of Rubin Evans, a Correctional Officer at Kilby, as evidence of such a violation. ² (Doc. 264 at P 3).

Said affidavit merely states that upon [*3] plaintiff's transfer to Kilby in November 1998, the officer inventoried some unauthorized property on plaintiff's person, including three sticks of incense. (See Doc. 264, Ex. A). Plaintiff chose to have the property destroyed, instead of mailed out of the facility. *Id.* It is the opinion of this court that evidence of one isolated incident that may or may not constitute a violation of a court order is insufficient to constitute a "current and ongoing" violation of plaintiff's federal rights. ³See [Parrish v. Alabama Dept. of Corrections, 156 F.3d 1128, 1130 \(11th Cir. 1998\)](#) (noting that a violation of an injunction is not, per se, a violation of a federal right). As such, the court is not persuaded as to plaintiff's argument on this point.

Next, plaintiff objects to the Magistrate Judge's denial of his withdrawal of offer of settlement [*4] (Doc. 239). As reasons for the denial, the Magistrate Judge states, in a footnote to the opinion, that "the agreement was complete at the evidentiary hearing with only three subsequent actions to be performed pursuant to the agreement.... There were no further 'terms of settlement' needed to complete the agreement." (See Doc. 256 at 8, n.5). The grounds for plaintiff's objection are as follows:

- 1): Plaintiff has a federal right to change his mind so long as it's not prejudicial to others;
- 2): even after the settlement report was filed it

¹ The court notes that this opinion only addresses certain of plaintiff's twelve numbered objections. Those objections not discussed have been reviewed by this court and are determined to be without sufficient merit to warrant discussion.

² Plaintiff also claims that Officer Evans made certain derogatory comments about plaintiff's lawsuit. However, these allegations are not found in plaintiff's attached exhibits and are not made under penalty of perjury. As such, this court finds that they are not sufficiently credible to warrant consideration.

³ It is important to reiterate that the present motion is plaintiff's first motion to cite for contempt that has been filed since November 1984. (See Doc. 256 at 3).

is evident by the plaintiff's Exhibit # A annexed hereto that Andy Redd's steps to ensure that the regulation was being enforced state wide has proven to be ineffective; and 3) the [magistrate's] manipulation of the pending motions to cite for contempt filed after the June 9, 1998 court proceedings. (Doc. 264 at P 4 (unnumbered); see also P 12).⁴

[*5] With respect to plaintiff's first ground for objection, the court notes that at the time plaintiff withdrew his "offer" of settlement on July 6, 1998, the settlement agreement was already in place. (See Doc. 234). As such, the court treats plaintiff's withdrawal as a motion to have the terms of the settlement enforced. A review of defendants' report, dated July 13, 1998, (Doc. 241) satisfies the court that defendants have indeed fulfilled the terms of the settlement agreement. Furthermore, the court finds that plaintiff's Exhibit A, the affidavit of Officer Evans as described above, is insufficient to prove that the steps taken by Mr. Redd to ensure that plaintiff be allowed to use incense during religious services were insufficient. Finally, with respect to plaintiff's third ground of objection, this court is unclear as to exactly what plaintiff means in referring to "the [magistrate's] manipulation of the pending motions to cite for contempt." Because the court finds no evidence of "manipulation" in the record, the court, without more, is unpersuaded by plaintiff's contention.

Plaintiff also objects to the finding of the Magistrate Judge that "during the evidentiary hearing, [*6] the only information provided by plaintiff which can be connected to the issue of presently being able to exercise his religion was plaintiff's statement that he was not allowed to receive incense at Kilby while he was in transit." (Doc. 256 at 14). Plaintiff contends that he presented evidence that he was "completely denied the right to practice Islam at kilby [sic]." (Doc. 264 at P 6). However, this court can find no evidence of record that plaintiff made any such statements at the June 9, 1998, hearing.⁵

[*7] Finally, plaintiff objects to the Magistrate Judge's recommendation that plaintiff's numerous filings after the

June 9, 1998 hearing, be denied inasmuch as they are directed to a violation of the injunctive decree and are thus not "entirely germane to the violation of a federal right." (Doc. 256 at 14-15, n.9, and 17 at n.11). Plaintiff contends that "although the pleadings may be apprehended by certain mentalities as complaints about violations of the injunctive decree they are complaints about violations of federal rights." (Doc. 264 at P 7; see also PP 10-11).

The court agrees with the finding of the Magistrate Judge that because of the more stringent "compelling interest" standard employed by this court in evaluating plaintiff's free exercise claims when it entered the March 1982 injunctive decree, it is no longer clear that plaintiff's claims evidence free exercise violations under the present "reasonably related" standard. (See Doc. 256 at 12-13). Furthermore, plaintiff has offered no evidence of free exercise violations other than the alleged violation of the court's prior injunctive decree. As such, this court is unpersuaded by plaintiff's claims that he has stated [*8] claims regarding a violation of his federal rights.

As such, it is hereby ORDERED that the Report and Recommendation of the Magistrate Judge be ADOPTED as MODIFIED above; that defendant's motion to terminate prospective relief pursuant to the Prison Litigation Reform Act of 1996 (Doc. 213) be GRANTED; and that plaintiff's motion to cite for contempt filed against Warden Arnold Holt (Doc. 208) be DENIED.

It is further ORDERED that plaintiff's renewed motion for sanctions filed against James Cook and Redd (Doc. 220) and notice of motion to cite for contempt filed against defendants and Officer Massey (Doc. 227) be and are hereby DENIED; that plaintiff's "Notice of Motionis & Motion to Cite for Contempt [sic]" (Doc. 240) be deemed MOOT; and that plaintiff's second motion to cite additional defendants for contempt in support of plaintiff's opposition to motion to vacate decree filed against Kelly Derrick (Doc. 242), motion to cite for contempt for order to show cause and for protective order filed against Officer

⁴ Plaintiff has also filed a motion requesting that this court enter an order treating his motion to withdraw his offer of settlement as a motion to reinstate his motion to cite either James Cooke [sic] or Warden Holt (as both names are mentioned in the motion) for contempt. (Doc. 263). Attached to the motion is a letter to Mr. Redd requesting that he advise Chaplain Chestnut to "confirm" to the injunction. Because the court finds this letter insufficient to constitute evidence of a violation of this court's prior injunctive order with respect to either Cook or Holt, and for the reasons previously stated and further hereintofore set out in this order, plaintiff's motion is DENIED.

⁵ In a document entitled "Affirmation in Opposition to Report." dated July 27, 1998, plaintiff contends that he met with Kilby's Chaplain Chestnut and Warden Roy Hightower and requested to be allowed to have incense sent in by mail "to be used during the celebration of the Five Percents National Holiday on June 13th and was told no...because the Five Centers are not scheduled for services at Kilby." (Doc. 250 at P 8; see also Doc. 265). However, there is no evidence that such a statement was made to the Magistrate Judge at the evidentiary hearing on June 9, 1998. Additionally, the court finds that this "evidence" was properly considered by the Magistrate Judge in reaching his conclusions. (See Doc. 256 at 9).

Massey for failure to photocopy plaintiff's pleading related to the Five-Percenters (Doc. 247), motion to cite for contempt of court filed against Ron Jones and Chaplain Smith [*9] (Doc. 252), emergency motion for order filed against Officers Moony, Evans and Hardin, and Commissioner Hopper (Doc. 255), and withdrawal of offer of settlement (Doc. 239) be DENIED.

DONE this 1st day of June, 1999.

Virgil Pittman

SENIOR UNITED STATES DISTRICT JUDGE

JUDGMENT - JUDGEMENT ENTERED ON DOCKET
June 3, 1999

It is ORDERED, ADJUDGED, and DECREED that defendants' motion to terminate prospective relief pursuant to the Prison Litigation Reform Act of 1996 (Doc. 213) be and is hereby GRANTED, thereby terminating the injunction entered in this action on March 31, 1982.

It is further ORDERED, ADJUDGED, and DECREED that plaintiff's motion to cite for contempt filed against

Warden Arnold Holt (Doc. 208), renewed motion for sanctions filed against James Cook and Redd (Doc. 220) and notice of motion and motion to cite for contempt filed against defendants and Officer Massey (Doc. 227) be and are hereby DENIED; that plaintiff's "Notice of Motionis & Motion To Cite For Contempt [sic]" (Doc. 240) be and is hereby determined to be MOOT; and that plaintiff's second motion to cite additional defendants for contempt in support of plaintiff's opposition to motion to vacate [*10] decree filed against Kelly Derrick (Doc. 242), motion to cite for contempt for order to show cause and for protective order filed against Officer Massey for failure to photocopy plaintiff's pleading related to the Five-Percenters (Doc. 247), motion to cite for contempt of court filed against Ron Jones and Chaplain Smith (Doc. 252), emergency motion for order filed against Officers Moony, Evans, and Hardin and Commissioner Hopper (Doc. 255), and withdrawal of offer of settlement (Doc. 239) be and are hereby DENIED. No costs are to be taxed.

DONE this 1st day of June, 1999.

Virgil Pittman

SENIOR UNITED STATES DISTRICT JUDGE