

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

FILED  
April 4, 1975  
William J. Srstka,  
Clerk  
By DeAnn Noteboom,  
Deputy

CIV72-4161

Bernard Crowe, et al.,

Plaintiffs

vs.

Don R. Erickson, et al.,

Defendants

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FINDINGS OF FACT

CONCLUSIONS OF LAW

AND ORDER

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Mr. Stephen L. Pevar, of Rosebud, South Dakota, and Mr.  
Roy S. Haber, of Boulder, Colorado, attorneys for  
plaintiffs;

and

Mr. William J. Janklow, Attorney General for the State  
of South Dakota, of Pierre, South Dakota, attorney

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1           Upon the submitted record in this case and the parties'  
2 agreement on the plaintiffs' proposed findings of fact and  
3 conclusions of law, the Court finds as follows:

4           1. This is a civil action filed by the inmates of the  
5 South Dakota State Penitentiary at Sioux Falls, South Dakota,  
6 against the Warden, other prison officials, and the Governor,  
7 under 42 U.S.C. Sec. 1983, for declaratory and injunctive  
8 relief. There are two sub-classes of plaintiffs in this case:  
9 one is composed of all the inmates and the other is composed  
10 solely of the Indian inmates. This decision concerns solely  
11 the sub-class composed of Indian inmates.

12           2. The Indian sub-class has asked the Court to rule  
13 that they are entitled under the First Amendment to wear their  
14 hair in traditional styles for religious purposes.

15           3. On May 21, 1974, a temporary restraining order was  
16 issued by this Court enjoining the defendants from taking  
17 disciplinary action against the plaintiff Indian sub-class for  
18 violations of the prison haircut rule. A hearing was held on  
19 the merits on June 4, 1974, at which time the Court extended  
20 its order until the parties could take further depositions,  
21 and brief their respective positions.

22           4. The plaintiff sub-class is composed of American  
23 Indians, who are, by and large, members of the Sioux Nations  
24 and other tribes of the Northern Plains area, and who are  
25 confined under the jurisdiction of the South Dakota Board of  
26 Charities and Corrections.

27           5. At the hearing, plaintiffs' first witness was  
28 Wallace Black Elk, a Sioux medicine man who has lived on the  
29 Rosebud Indian reservation all his life. Mr. Black Elk testi-

1 manifestations of the spiritual, of the Great Spirit.

2 In describing the significance which personal appear-  
3 ance has in Indian spiritual life, Black Elk testified that  
4 the Sioux were created by the Great Spirit with long hair and  
5 that the Indians emulate his appearance in their worship.

6 6. Plaintiffs' anthropologist, Deward Walker, of the  
7 University of Colorado, testified and interpreted Black Elk's  
8 testimony as showing a deep religious symbolism. Specifically  
9 regarding the fundamental role which personal appearance  
10 plays in Sioux worship, Dr. Walker testified, and the Court  
11 finds that hair style is highly symbolic.

12 7. In deposition, various Indian inmates testified as  
13 to their religious belief and practice. Their testimony  
14 corroborates that given by the experts at trial. The Court  
15 finds that there is no question but that their religious  
16 beliefs are sincere. Indeed, defendants have not attempted  
17 to dispute their sincerity.

18 8. The defendants put on one witness, Stan Collins,  
19 to refute plaintiffs' evidence on Sioux spiritual belief and  
20 practice. The Court, however, does not find his testimony  
21 persuasive because, under cross-examination, he admitted that  
22 long hair has religious significance to Sioux Indians who  
23 practice their tribal religion.

24 9. The Court concludes, based on the live testimony  
25 and the depositions, that hair length and style is a tenet of  
26 Indian religion, particularly plains Indians, which includes  
27 members of the plaintiff sub-class.

28 10. The defendants attempted to justify their hair  
29 length regulation. Their sole justification for the rule was

1 whenever all inmates are not treated uniformly, feelings of  
2 unrest may arise. This theory was unsupported by factual  
3 evidence.

#### 4 PLAINTIFFS' FREEDOM OF RELIGION CLAIM

5 11. Plaintiffs have asked this Court to afford them  
6 protection under the Free Exercise Clause of the First Amend-  
7 ment. The Court hereby adopts the test put forth by Judge  
8 Hanson in *Teterud v. Gillman*, 385 F.Supp. 153, 156 (S.D. Iowa  
9 1974):

10 In considering whether the prison's hair regula-  
11 tion infringes upon the plaintiffs' constitu-  
12 tional right to the free exercise of his religion,  
13 or not an Indian's cultural and traditional  
14 beliefs constitute a religion and, secondly,  
15 whether the plaintiff possesses a sincere belief  
16 in his creed.

17 12. The United States Supreme Court has defined  
18 "religious belief" as follows:

19 Within that phrase would come all sincere  
20 beliefs which are based upon a power or  
21 being, or upon a faith, to which all else  
22 is ultimately dependent.

23 *United States v. Seeger*, 380 U.S. 163, 176 (1965). The Court  
24 finds, based on Black Elk's testimony, that the Indians'  
25 beliefs are "religious" as defined in Seeger.

26 13. The Court also finds, as stated in paragraphs 7  
27 and 9, that hair style is a basic tenet of the Indians'  
28 religion, and that the Indians "possess a sincere belief in  
29 their creed."

30 14. The Court believes that it is bound by the test  
31 formulated in *Procunier v. Martinez*, 416 U.S. 396 (1974), in  
32 determining whether defendants can restrict plaintiffs'  
33 constitutional right to free exercise of religion. That test

1 Second, the limitation of First Amendment  
2 freedoms must be no greater than is necessary  
3 or essential to the protection of the parti-  
4 cular governmental interest involved. 416 U.S.  
5 at 413.

6 15. Applying the two-part Procunier test, the Court  
7 finds that defendants have failed to carry their burden of  
8 showing the first part of the Procunier test. Defendants  
9 offered no showing of a substantial governmental interest  
10 furthered by the hair style regulation. Because defendants  
11 failed to meet the first part of the test, the second part is  
12 not reached.

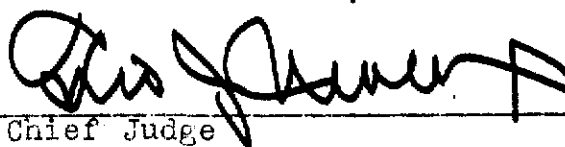
13 Accordingly,

14 IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the  
15 hair length regulation of South Dakota State Penitentiary as  
16 applied to members of the plaintiff Indian sub-class is  
17 unconstitutional.

18 IT IS FURTHER ORDERED, that the defendants, their  
19 agents, servants, employees and their successors in office  
20 are permanently enjoined from enforcing said hair regulation  
21 against members of said plaintiff sub-class.

22 Done and entered at Sioux Falls, South Dakota, this  
23 4th day of April, 1975.

24 BY THE COURT:

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27 Chief Judge  
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