Mulazim v. Suiter

746 F.2d 1478 (1984) | Cited 0 times | Sixth Circuit | October 30, 1984

BEFORE: STEWART, Associate Justice (Retired);*fn* ENGEL and MERRITT, Circuit Judges

Order

The plaintiff appeals the order dismissing his pro se prisoner civil rights action. He now moves for the appointment of counsel. That motion was referred to this panel pursuant to Rule 9 (a), Rules of the Sixth Circuit.

The plaintiff, an inmate at the Huron Valley Men's Facility in Michigan, filed a complaint raising four claims:

(1) He was given a false misconduct report accusing him of possessing unauthorized medication;

(2) The defendants improperly returned a check, drawn on the outside account of a fellow inmate, sent to the plaintiff for deposit in the prison account of a religious organization founded and headed by the plaintiff;

(3) The plaintiff was denied an opportunity to be heard in the above matters; and

(4) Defendant Phelps failed to investigate the apparent loss of a manuscript being returned to the plaintiff from the Library of Congress.

The defendants filed a motion to dismiss. The Magistrate reviewed the plaintiff's claims, found them without merit, and recommended the motion to dismiss be granted. The district court carefully addressed each of the plaintiff's objections to the Magistrate's report and ordered the action dismissed. This appeal followed.

In reviewing the district court's dismissal of the plaintiff's action under Rule 12 (b) (6), Federal Rules of Civil Procedure, this Court must construe the plaintiff's complaint liberally and take as true all allegations therein. Westlake v. Lucas, 537 F.2d 857, 858 (6th Cir. 1976). We also note the Supreme Court's statement that motions to dismiss under Rule 12(b)(6) should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

We have reviewed the record of the proceedings below in light of these standards. For the reasons

stated in the Magistrate's report of January 10, 1984 and the district court's memorandum opinion of March 29, 1984, we find the district court did not err in dismissing the plaintiff's first, third, and fourth claims listed above as without merit. We also find the district court did not err in denying the plaintiff's requests to amend his complaint. Such denial was without prejudice to the filing of a new action and the fact the district court did not order the proposed supplemental complaint so filed was within the court's discretion.

We do find reversible error, however, in the district court's dismissal of the plaintiff's second claim. The plaintiff asserted that he is an adherent (and apparently the founder) of the Melanic Palace of the Rising Sun, a religious organization among inmates. Prison officials apparently have recognized the organization and permitted it to open an account with the resident accounting office. The plaintiff received in the mail a money order for $50.00 made payable to the Melanic Palace and drawn on the outside account of a fellow inmate. Following a hearing, defendant Suiter found the money order appeared to violate a prison regulation prohibiting the exchange of money between inmates and ordered its return. The plaintiff claimed that action violated his first amendment rights and that the regulation in question was discriminatorily applied to the Melanic faith.

These claims present a colorable issue under the first amendment. Although a prisoner does not have an absolute right to practice his religion in accord with his desires, he "is entitled to have a court balance his constitutional claims against legitimate state interests in operating its prisons." Brown v. Johnson, No. 82-1768 (6th Cir. September 11, 1984), Slip Op. at 5; Jihaad v. O'Brien, 645 F.2d 556, 564 (6th Cir 1981). Prison regulations which allegedly infringe upon first amendment rights "must be carefully scrutinized to ascertain the extent to which they are necessary to effectuate the legitimate policies and goals of the corrections system." Brown v. Johnson, supra, Slip Op. at 6, quoting Childs v. Duckworth, 705 F.2d 915, 920 (7th Cir. 1983).

We find the present record inadequate for the district court to have made the balancing test required under the above guidelines. It does not contain a copy of the regulation in question nor an explanation of why prison officials concluded the receipt of the money order appeared to be an exchange of money between inmates. There is nothing in the record to indicate the account is controlled by the plaintiff or that the monies therein are expended for anything other than legitimate religious purposes. Simply, the record as it now stands fails to reveal the penological interests served under these circumstances. In order for the district court to undertake the balancing required between the plaintiff's first amendment rights and the state's interests in operating the prison, more is required.

Upon examination of the record and the plaintiff's informal brief, this panel finds that oral argument is not required for purposes of this appeal. Rule 34 (a), Federal Rules of Appellate Procedure. Therefore,

It is ORDERED that the plaintiff's motion for appointment of counsel be and it hereby is denied.

In accordance with the legal discussion above,

It is further ORDERED that the district court's order of March 30, 1984 be and it hereby is affirmed insofar as it dismissed the plaintiff's first, third and fourth claims as listed above. The same order is reversed insofar as it dismissed the plaintiff's second claim as listed above. That claim is remanded to the district court for further proceedings consistent with this order. Rule 9(d)(3) and (4), Rules of the Sixth Circuit.

* The Honorable Potter Stewart, Associate Justice (Retired) of the Supreme Court of the United States, sitting by designation