

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Roanoke Division

LEROY A. LOVELACE, #161416,

Plaintiff,

v.

CIVIL ACTION NO. 7:07-cv-00506

KATHLEEN BASSETT, et al.,

Respondents.

BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Defendants Oslin, Huffman and Bassett, by counsel, herein submit their Brief in support of their Motion to Dismiss and state as follows.

1. Virginia Department of Corrections (“VDOC”) inmate Leroy A. Lovelace, #161416 (“Lovelace”), prosecutes this action pro se. The action proceeds by way of an Amended Complaint that Lovelace executed October 26, 2007, and which this Court filed October 29, 2007. The action concerns the nutritional adequacy of the meals served to prisoners who participated in the Ramadan fast in calendar year 2005. Lovelace claims that the denial to him of daily means totaling 2600 calories during the month of Ramadan abridged his right to religious expression, his rights under the Religious Land Use And Institutionalized Persons Act (“RLUIPA”) and his due process rights. He seeks declaratory and injunctive relief, as well as an award of punitive damages.

2. According to Lovelace, he had been admitted to the VDOC’s religious dietary program known as Common Fare in 2001. (Amended Complaint, ¶ 5). Lovelace alleges that his facility, the Keen Mountain Correctional Center (“Keen Mountain”), had a history of refusing to

provide Common Fare participants with their lunch meals during the month when the Muslim inmates celebrated Ramadan. (Amended Complaint, ¶ 7). Lovelace asserts that although the Ramadan fast requirements prohibit him from eating meals after sunrise and before sunset, he nonetheless should have been provided the equivalent of a lunch meal at the same time he received his dinner meal. (Id.). Lovelace says that he met with the institution's Food Service Supervisor, Defendant Oslin, prior to the 2005 celebration of Ramadan to address this issue, but that Oslin refused to provide the fasting inmates, including Lovelace, with "supplemental calories." (Amended Complaint, ¶ 8).

3. The primary point for Lovelace is that three (3) Common Fare meals daily will provide a prisoner with approximately 2500 calories. The lunch meal contains approximately 1000 calories, and therefore, Lovelace only had between 1200 and 1500 calories daily during Ramadan. (Amended Complaint, ¶ 9). Lovelace, who alleges that he is 58 years old, 6 foot 2 inches, and 195 pounds complains that he lost approximately 10 pounds during Ramadan due to the reduced caloric intake. (Amended Complaint, ¶ 14). Lovelace additionally says that the experience of Ramadan provided him a lesser "qualitative spiritual experience" because he was always hungry and had to engage in disputes with the Defendants over the amount of food being provided him. (Amended Complaint, ¶ 15).

4. This Motion will first address Lovelace's RLUIPA claim. RLUIPA provides that a government may not impose a substantial burden on an individual prisoner's religious exercise unless the government can demonstrate that the burden imposed furthers a compelling governmental interest and is the least restrictive means available to further that interest. 42 U.S.C. § 2000cc-1(a); Lovelace v. Lee, 472 F.3d 174, 185 (4th Cir. 2006). Thus, a threshold question that any prisoner's RLUIPA claim involves is whether he has adequately alleged that a

challenged procedure substantially burdens his religious exercise. In this case the alleged burden is the failure to provide the equivalent of a lunch meal to those prisoners participating in the Ramadan fast, in order that their daily caloric intake is increased beyond the alleged 1200 to 1500 daily calories provided through the breakfast and dinner meals. The Defendants contend that the alleged reduced caloric intake for a period of thirty (30) days while prisoners are restricted in the times during which they might eat meals is not a “substantial burden.”

5. The Fourth Circuit addressed this substantial burden question in the Lovelace opinion. The Court noted that in the First Amendment Free Exercise context the Supreme Court has defined a substantial burden as one substantially pressuring an adherent to modify his behavior and violate his beliefs, or one forcing a person to choose between following his or her religious precepts and forfeiting governmental benefits or abandoning a religious precept. Id. at 187. The Fourth Circuit in Lovelace adopted the substantial burden test that the Supreme Court announced in Thomas v. Review Board, 450 U.S. 707, 718 (1981), and concluded that a substantial burden occurs when the government “put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs.” Id. quoting 450 U.S. at 718.

6. In the instant case there is neither an allegation nor a suggestion that the practice of providing the inmates celebrating Ramadan with breakfast and dinner meals, and not providing them with a lunch meal that presumably would be eaten before sunrise or after sunset, was designed in any way to influence inmates in deciding whether to participate in the Ramadan fast. Nor does Lovelace raise any suggestion whatever that his knowledge that he would be restricted to the breakfast and dinner meals during the period of Ramadan constituted a substantial pressure on him to forego participation in the Ramadan fast. Because the allegations

of the Amended Complaint do not meet the substantial burden test, Lovelace's RLUIPA claim fails.

7. For the same reasons just articulated, Lovelace also has no First Amendment claim for the denial of free exercise. Thomas v. Review Board, *supra*, at 718.

8. There remains for discussion then Lovelace's due process claim. Lovelace readily acknowledges that the grievance procedure for VDOC prisoners has always been available for him to challenge the way in which meals are provided during Ramadan. He says that he discussed the subject matter with the Food Service Supervisor prior to Ramadan 2005 as well. The Fourth Circuit's opinion in Lovelace indicates that the Supreme Court's decision in Mathews v. Eldridge, 424 U.S. 319, 335 (1976), provides the parameters of the test this Court must apply. In that regard, the Court will consider: (1) the private interest that is affected by government action; (2) what risk there is of erroneous deprivation by using the procedures available and the value, if any, of other procedures; and (3) the state's interests, which interests include any physical and administrative burdens of additional safeguards. As the factual allegations of the Complaint indicate, Lovelace actually had pre-deprivation process available to him to challenge the Ramadan meal policy. He not only had the prisoner grievance procedure available to him at any time leading up to Ramadan, but he also had the ear of the Food Service Supervisor as well. Lovelace in this instance confuses results with process, as the process available to him clearly satisfied any due process protections that might be thought needed to challenge the Ramadan meal policy.

WHEREFORE, for the various reasons presented above, these Defendants respectfully request the Court to enter its order dismissing this Complaint.

Respectfully submitted,

MIKE OSLIN, LARRY HUFFMAN
& KATHLEEN BASSETT

By s/ Mark R. Davis
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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of January, 2008, I electronically filed the foregoing Brief In Support Of Defendants' Motion To Dismiss with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: N/A, and I hereby certify that I have mailed by United States Postal Service the documents to the following non-CM/ECF participants: the Plaintiff, Leroy A. Lovelace, #161416, at Keen Mountain Correctional Center, Post Office Box 860, Oakwood, Virginia 24631.

s/ Mark R. Davis
Senior Assistant Attorney General