

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 94-41002
Summary Calendar

CLARENCE S. DAVIS, SR.,

Plaintiff-Appellant,

VERSUS

JUDGE RICHARD WALL AND GERALD WILLIAMS,

Defendant-Appellees.

Appeal from the United States District Court
For the Western District of Louisiana
(93-CV-2121)

(March 9, 1995)

Before THORNBERRY, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

THORNBERRY, Circuit Judge:*

Facts and Prior Proceedings

Clarence Davis, Sr. (Davis) is a prisoner confined by the state of Louisiana. Davis filed a complaint under 42 U.S.C. § 1983 alleging that he is being denied the right to practice his religion in violation of the First Amendment. Specifically, Davis sued the

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

prison warden, Richard Wall (Wall), and the prison chaplain, Gerald Williams (Williams), because they will not provide a spiritual leader to facilitate the practice of his Islamic religion. Davis contends that Wall and Williams have a duty to fulfill the religious needs of the prisoners who follow the Nation of Islam-American sect.

Wall and Williams filed a motion for summary judgment with supporting documents contending that the prison provides a spiritual leader for the Islamic prisoners, although Davis was no longer allowed to attend the services because his consistent disagreement with the teachings of the leaders and other inmates was creating a situation that could result in physical violence. Chaplain Williams provided Davis with an alternative method for servicing his specific religious needs by suggesting that he place the religious minister of his choice on his visiting list. Davis did not pursue this alternative.

In response to the appellees' motion for summary judgment, Davis filed an unsworn response, contending that Chaplain Williams had a duty to find another chaplain to fulfill the religious needs of the prisoners who follow the Nation of Islam-American sect. Davis did not complain of having been excluded from the Islamic services at the prison. Davis also stated that he was only seeking injunctive relief in his original complaint.¹

¹ We note that Davis requested monetary relief in his original complaint as well as in his brief to this Court.

The magistrate judge recommended granting the defendant-appellees' motion for summary judgment, concluding that Davis failed to show that he was denied a reasonable opportunity to exercise his religion. The district court adopted that magistrate judge's report and dismissed the action with prejudice. Davis filed a timely notice of appeal.

Discussion

In reviewing a district court's ruling on a motion for summary judgment this Court applies the same standard that governs the district court. **Bache v. American Telephone & Telegraph**, 840 F.2d 283, 287 (5th Cir.) **cert. denied**, 488 U.S. 888 (1988). We should therefore not affirm a summary judgment ruling unless we are "convinced, after an independent review of the record that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law." **Brooks, Tarlton, Gilbert, Douglas and Kressler v. United States Fire Insurance Co.**, 832 F.2d 1358, 1364 (5th Cir. 1987).

Davis does not allege that Wall or Williams interfered with the practice of his religion, except by not providing him a chaplain representing his particular Islamic sect. He has no legal basis for his complaint.

In **Cruz v. Beto**, 405 U.S. 319, 322 n.2 (1972), the Court stated that prisons are not required to provide a chaplain, priest, or minister for inmates of every faith. Rather, a prisoner need only be afforded a reasonable opportunity to exercise religious freedom guaranteed by the First and Fourteenth Amendments. **Id.**; **see**

also *Kahey v. Jones*, 836 F.2d 948, 950 n.1 (5th Cir. 1988). The question then becomes whether prison officials provided a reasonable opportunity for Davis to exercise his religion.

In support of their motion for summary judgment, the appellees provided a statement of undisputed facts along with Chaplain William's affidavit. These documents show beyond doubt that the defendants did not interfere with Davis' practice of religion. It is clear that the prison established provisions for the Islamic inmates to practice their faith. Through the assistance of an outside sponsor of the Islamic faith, Islamic inmates were allowed to practice their religion by attending religious services in the prison.² Davis attended religious services with the other inmates of the Islamic faith, but lost this privilege because he consistently disagreed with the teachings of the leader and the other inmates, creating a disruptive situation. The Islamic leaders told Chaplain Williams that the disagreements had become so serious that they feared that physical violence might result. Accordingly, Davis was not allowed to attend the Islamic services.

² At all relevant times, Davis was an inmate of the Avoyelles Correctional Center (AVC). AVC Policy and Procedure No. 03-08-001 provides that religious practices will only be limited by documentation showing a threat to safety to inmates or if the activity is disruptive:

POLICY: It is the policy of this institution that inmates have the opportunity to participate in practices of their religious faith that are deemed essential by the faith's judicatory. This will be limited only by documentation showing a threat to the safety of persons involved in such activity or that the activity itself disrupts order in the institution.

He was, however, given an alternative method to practice his faith. Chaplain Williams informed Davis that prison policy allowed him to place an ordained minister of his faith on his visiting list as a religious advisor. Davis, therefore, has been given a reasonable opportunity to exercise his religious freedom.³

Conclusion

The summary judgment awarded by the district court is affirmed.

AFFIRMED.

³ To the extent that Davis seeks injunctive relief, "his transfer to another prison has rendered moot these claims." **Cooper v. Sheriff, Lubbock County, Texas**, 929 F.2d 1078, 1084 (5th Cir. 1991). To the extent that Davis attempts to seek relief on behalf of other AVC inmates, his attempts are futile because this is not a class action. **See Hamm V. Groose**, 15 F.3d 110, 112 (8th Cir. 1994).