

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40301

JOHNSON J. LEWIS,

Plaintiff-Appellee

VERSUS

WAYNE SCOTT; JAMES SHAW,

Defendants-Appellants.

Appeal from the United States District Court
For the Eastern District of Texas
(6:94-CV-689)

September 2, 1997

Before POLITZ, Chief Judge, BENAVIDES and PARKER, Circuit Judges.

PER CURIAM:*

This case is on appeal from a Declaratory Judgment rendered in favor of Plaintiff-Appellee by the United States District Court for the Eastern District of Texas. Plaintiff-Appellee, Johnson J. Lewis, Texas prisoner number 629945, successfully argued before the district court that his rights under the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb-1, had been violated by

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

the Texas Department of Criminal Justice-Institutional Division's facial hair policy, in that he was not allowed to grow a full beard and clipped moustache in accordance with the tenets of his Islamic faith. The district court's judgment and subsequent denial of Appellants' Motion for New Trial and the filing of Appellants' brief on appeal all preceded the Supreme Court's decision in City of Boerne v. P.F. Flores, Archbishop of San Antonio, ___ U.S. ___, 117 S.Ct. 2157, (1997), wherein Justice Kennedy, writing for the Court, explained that the RFRA exceeded the power of Congress under § 5 of the Fourteenth Amendment to the United States Constitution. Therefore, the statutory basis for Plaintiff-Appellee's claim having evaporated, this matter is reversed and remanded to the district court with instructions to dismiss Plaintiff-Appellee's claim based on the RFRA.

REVERSED AND REMANDED.