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States Court of Appeals
for the Third Circuit

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Ash-Bey v. Fauntleroy

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-1865

THOMAS ASH-BEY,

Appellant

v.

HARRY FAUNTLEROY, LT.; SALVATORE LOPRESTI, CAPT.; CHAPLAIN
AZIZ; JOSE CORDERO, COUNSELOR; THOMAS, OFFICER; RODRIGUEZ,
OFFICER, ALL OF F.C.I. FORT DIX

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

(Dist. Court No. 98-cv-01447)
District Court Judge: Honorable Jerome B. Simandle

Submitted Under Third Circuit LAR 34.1(a)
January 17, 2002

Before: ALITO and ROTH, Circuit Judges, and SCHWARZER, Senior District
Judge

(Opinion Filed: January 30, 2002)

MEMORANDUM OPINION OF THE COURT

PER CURIAM:

Because we write for the parties only, the background of the
case need not
be set out. We reject the appellant's argument that the prison
regulations at issue in this

case violate the First Amendment of the United States Constitution. Because the prison restrictions on the wearing of certain apparel were reasonably related to legitimate penological interests, we affirm the District Court's summary judgment in favor of the defendants.

Although prisoners' personal liberties are certainly curtailed during incarceration, the Supreme Court has made it clear that prisoners "do not forfeit all constitutional protections by reason of their conviction and confinement in prison."

DeHart v. Horn, 227 F.3d 47, 50 (3d Cir. 2000) (quoting Bell v. Wolfish, 441 U.S. 520, 545 (1979)). "Inmates clearly retain protections afforded by the First Amendment, . . .

including its directive that no law shall prohibit the free exercise of religion." Id. (quoting

O'Lone v. Shabazz, 482 U.S. 342, 348 (1987) (citations omitted)).

However, certain

restrictions on inmates' exercise of these constitutional rights are justified by the valid

penological objectives of deterrence of crime, rehabilitation of prisoners, and institutional

security. See id. at 50-51.

In Turner v. Safley, 482 U.S. 78 (1987), the Supreme Court concluded that

"when a prison regulation impinges on inmates' constitutional rights, the regulation is

valid if it is reasonably related to legitimate penological interests."

Id. at 89. Turner

counsels consideration of the following four factors:

"First, there must be a 'valid, rational connection' between the prison

regulation and the legitimate governmental interest put forward to justify it"

and this connection must not be "so remote as to render the policy arbitrary

or irrational." Second, a court must consider whether inmates retain

alternative means of exercising the circumscribed right. Third, a court must

take into account the costs that accommodating the right would impose on

other inmates, guards, and prison resources generally. And fourth, a court

must consider whether there are alternatives to the regulation that "fully

accommodate[] the prisoner's rights at de minimis cost to valid penological

interests."

DeHart, 227 F.3d at 51 (quoting *Waterman v. Farmer*, 183 F.3d 208, 213 (3d Cir. 1999)

(internal citations omitted)). The District Court correctly applied Turner and concluded

that the regulations at issue did not violate the First Amendment.

We also agree with the District Court that, assuming for the sake of

argument that the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb through

2000bb-4, applies, the record does not show that the regulations impose a "substantial

burden" on religious exercise.

We have considered all of the defendants' arguments and see no basis for

reversal. The judgment of the District Court is therefore affirmed.

TO THE CLERK OF THE COURT:

Kindly file the foregoing Opinion.

Circuit Judge

UNITED STATES COURT OF APPEALS
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Judge

(Opinion Filed:)

JUDGMENT

This cause came to be heard on the record from the United States
District
Court for the District of New Jersey and was submitted under Third Circuit
LAR 34.1(a)
on January 17, 2002.

After review and consideration of all contentions raised by the
appellant, it
is hereby ORDERED and ADJUDGED that the judgment of the District Court
entered on

March 8, 2001, be and is hereby affirmed, all in accordance with the opinion of this Court.

ATTEST:

Clerk

DATED: