

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

JAKE VOSHELL, et al.,

Plaintiffs,

vs.

JOHN SPENCE, et al.,

Defendants.

No. 4:03-cv-40522-JEG-CFB

**ORDER GRANTING SUMMARY
JUDGMENT FOR DEFENDANTS**

Plaintiffs, now represented by counsel, bring this case under 42 U.S.C. § 1983, alleging that Defendants wrongfully disciplined them for their involvement in Church of the New Song (CONS). They seek declaratory relief, injunctive relief, and damages.

This case was stayed on February 22, 2005, pending the outcome of Wycoff v. Brewer, No. 4:05-cv-00068 (S.D. Iowa) (recaptioned Smith v. Ault). On April 2, 2009, the Honorable Robert W. Pratt entered an order in Smith v. Ault, granting prison officials relief from previous injunctions that allowed inmate members of CONS to exercise their religion equally with other religions and that allowed CONS inmate-ministers to visit segregated CONS inmates.

In light of the ruling in Smith v. Ault, this Court lifted the stay, and Defendants moved for summary judgment. Plaintiffs did not file a resistance, and the Court, on its own motion, extended the time for Plaintiffs to resist the motion. To date, Plaintiffs have not resisted the motion. For the following reasons, the Court grants Defendants' motion.

SUMMARY JUDGMENT STANDARD

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). To preclude the entry of summary judgment, the nonmovant must make a sufficient showing on every essential element of its case for which it has the burden of proof at trial.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Cont'l Grain Co. v. Frank Seitzinger Storage, Inc., 837 F.2d 836, 838 (8th Cir. 1988). The nonmoving party must go beyond the pleading and by affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); Celotex, 477 U.S. at 324. The quantum of proof that the nonmoving party must produce is not precisely measurable, but it must be "enough evidence so that a reasonable jury could return a verdict for the nonmovant." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257 (1986). On a motion for summary judgment, the Court views all the facts in the light most favorable to the nonmoving party and gives that party the benefit of all reasonable inferences that can be drawn from the facts. United States v. City of Columbia, Mo., 914 F.2d 151, 153 (8th Cir. 1990); Woodsmith Publ'g Co. v. Meredith Corp., 904 F.2d 1244, 1247 (8th Cir. 1990).

SUMMARY OF MATERIAL FACTS

The following facts are undisputed or taken in the light most favorable to Plaintiffs. Plaintiffs are inmates who, during the time relevant to the complaint, were incarcerated at the Iowa State Penitentiary (ISP) in Fort Madison, Iowa. They are Jacob Voshell, Jeff Winters, Burt Smith, Louie Jales, Scott Fleming, David Baber, Joseph Ewig, Bryan Keller, Wayne Quillen, Jr., Michael Joslin, Clayton Gregory, Richard Whitney, Thomas Keith, James Hall, and Kristopher Johnson. Defendants are the following correctional staff employed at ISP: John Spence, John Mathes, Ron Welder, Ruth Stockbridge, James Burton, Louis Galloway, Charles Harper, and Dave DeGrange.

For years, members of CONS and prison officials have been at odds over the genuineness of Church of the New Song as a religion. In dissolving the protective injunctions, Judge Pratt agreed with prison officials that some inmates used CONS as a way to violate prison rules prohibiting contraband, violence, and gang activity; and it was no longer equitable to continue giving CONS protected status in light of CONS inmates' abuse of the decrees. Smith v. Ault,

No. 4:05-cv-00068 (S.D. Iowa) (Order of Apr. 2, 2009, adopting Dec. 5, 2008, R&R, Clerk's No. 72, and Clerk's No. 69, at 28-30). The ruling in Smith v. Ault was not appealed.

Plaintiffs in the instant case were disciplined for violating prison rules against gang activity. They allege Defendants' acts were really in retaliation for their exercise of CONS beliefs. The punishments imposed included loss of good time or earned time, and none of the disciplinary decisions have been overturned. None of the Plaintiffs filed prison grievances that alleged the Defendant prison officials retaliated against them for exercising their religious rights. None of the Plaintiffs sustained physical injuries as a result of the allegations they raise in the complaint.

DISCUSSION

Defendants argue they are entitled to summary judgment for the following reasons:

(1) Plaintiffs failed to exhaust their administrative remedies before filing suit, as required by 42 U.S.C. § 1997e(a); (2) Plaintiffs allege no physical injury, a prerequisite to an action for mental or emotional injury under 42 U.S.C. § 1997e(e); (3) Defendants did not file disciplinary reports against Plaintiffs in retaliation for protected activity; (4) thirteen of the Plaintiffs' requests for declaratory and injunctive relief are moot because those inmates are no longer at the prison; (5) Plaintiffs' claims are barred by Heck v. Humphrey, 512 U.S. 477 (1994); and (6) Defendants are entitled to qualified immunity.

This Court takes judicial notice of the proceedings in Smith v. Ault, No. 4:05-cv-00068 (S.D. Iowa), and it adopts Judge Pratt's ruling that CONS is no longer entitled to protected status in the prison. Plaintiffs state in the complaint that they did not exhaust administrative remedies because they could not challenge their disciplinary and classification proceedings under the prison grievance program. Even assuming this is true, and assuming that not all of Plaintiffs' claims are barred by Heck v. Humphrey, or moot, the Court concludes that Defendants are entitled to summary judgment because Plaintiffs' claims of retaliation fail. There was some evidence on the record that Plaintiffs violated prison disciplinary rules, and there is no evidence

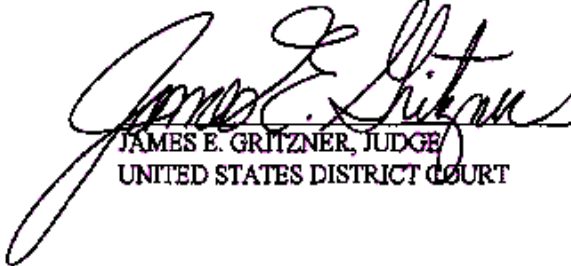
on this summary judgment record that retaliation was the motivating factor behind the discipline. See Goff v. Burton, 7 F.3d 734, 738 (8th Cir. 1993) (inmate must show that but for protected activity, prison officials would not have acted), cert denied, 512 U.S. 1209 (1994). Based on the undisputed material facts, no reasonable juror could find in Plaintiffs' favor, and Defendants are entitled to judgment as a matter of law.

SUMMARY

For the foregoing reasons, the Court **grants** Defendants' motion for summary judgment. Judgment shall be entered in favor of Defendants. This case is **dismissed**.

IT IS SO ORDERED.

Dated this 23rd day of July, 2009.



JAMES E. GRITZNER, JUDGE
UNITED STATES DISTRICT COURT