

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

Alexandria Division

JAMES HARRIS,

Plaintiff,

v.

A. BAKER,

Defendant.

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Civil Action No. 82-0928-AM

ORDER

This matter comes before the court on defendant's motion for summary judgment under Rule 56 (b) of the Federal Rules of Civil Procedure. For reasons stated in the accompanying memorandum opinion, defendant's motion is GRANTED. Accordingly, plaintiff's case is DISMISSED. If plaintiff wishes to appeal this decision, the plaintiff should notify the Clerk of his desire within 30 days of this order's date.

Let the Clerk send a copy of this order and accompanying memorandum opinion to the plaintiff and to counsel for the defendant.

DATE: March 16, 1983

Richard L. Williams  
UNITED STATES DISTRICT JUDGE

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JAMES HARRIS,	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 82-0928-AM
	)	
A. BAKER,	)	
Defendant.	)	

MEMORANDUM OPINION

Plaintiff is an inmate in Pocahontas Correctional Unit #13, a facility of the Virginia Department of Corrections. Defendant A. F. Baker is a correctional officer in that facility.

On Sunday, August 8, 1982, the defendant observed plaintiff and another inmate listening to a radio without wearing earphones. According to Division Guideline #141, inmates are required to wear earphones whenever they play their radios. On June 24, 1982, E. Stacy, Superintendent of the Pocahontas facility, issued a memorandum stating that radios played without earphones would be confiscated. Defendant asserts in an uncontested affidavit that the Superintendent's memorandum was posted on the inmate bulletin board, and that plaintiff had been advised of the rule prior to August 8, 1982.

On August 8, 1982, the defendant again requested that plaintiff use headphones when listening to his radio. When plaintiff refused to comply, the defendant confiscated the radio and charged him with a violation of posted rules and regulations.

Plaintiff contends that at the time his radio was confiscated, he was listening to a religious broadcast.

On October 7, 1982, plaintiff brought the present action for violation of his constitutional rights under 42 U.S.C. §1983. Plaintiff does not present a claim for intentional deprivation of his property without due process of law. If he did, he would not state a cognizable claim under Section 1983. See Parratt v. Taylor, 451 U.S. 527 (1981) (negligent property deprivation does not state claim if state provides adequate remedy); Palmer v. Hudson, \_\_\_ F.2d \_\_\_, No. 81-8967 (4th Cir., Jan. 6, 1983) (intentional property deprivation does not state claim if state provides adequate remedy); Phelps v. Anderson, \_\_\_ F.2d \_\_\_, No. 79-6231 (4th Cir., Feb. 22, 1983) (Virginia Tort Claims Act, prison grievance procedures provide adequate post-deprivation remedy). Rather, plaintiff claims that defendant's confiscation of his radio abridges his constitutional right to free exercise of his religious faith, for which he seeks compensatory damages of \$500,000.00. Defendant now moves this court for summary judgment. See Rule 56(b), Federal Rules of Civil Procedure.

In support of his contention that defendant's conduct constitutes an abridgment of his religious exercises, plaintiff states only that the program to which he was listening was "religious". He does not claim that the radio itself is a ritual object in his personal theology, or that listening to the radio is itself necessary to the practice of his religion. Nor does plaintiff assert that listening to the particular program he was listening to on August 8th, 1982, is a tenet of his religion.

Plaintiff presents no factual allegations from which to assess how important listening to the radio program was to exercise of his religion. He does not specify what he was listening to, other than it was religious. Indeed, he does not ever specify what his religion is.

But even if this court were to adopt assumptions which would fill all the gaps in plaintiff's allegations, plaintiff's claims that defendant's conduct was unconstitutional would not thereby be established. A restriction of a prisoners' religious expression will not be deemed unconstitutional if the restriction is necessary to safeguard legitimate institutional and penological interests. Sweet v. South Carolina Department of Corrections, 529 F.2d 854 (4th Cir. 1979). But the determination of prison officials of the need for the restrictions are subject to judicial review and will be struck down where they are not "reasonably and substantially justified by considerations of prison discipline and order." Id., at 863. See also Barrett v. Commonwealth of Virginia, 689 F.2d 498 (4th Cir. 1982).

The regulation at issue here, which requires inmates to wear headphones when listening to their radios or face confiscation of their radios, clearly has a critical role in maintenance of prison order, discipline, safety and comfort. The close proximity of so many individuals, all of whom are unable to avoid undesirable sound, requires that certain steps be taken to control unnecessary sound. Such control is particularly critical given the current state of technology, which permits even

portable radios to produce sound volumes which exceed the human pain threshold. And merely because inmates are imprisoned does not mean they should be held captive to whatever sounds radio owners choose to inflict on the prison compound-- the content as well as the volume of radio broadcasts may be offensive to some individuals. Finally, prison safety may depend on the audibility of emergency signals and instructions, which could be drowned in the cacaphony of unregulated prisoner radio use. The regulation at issue here stands for the proposition that prisoners who prove themselves unable to use their radios consistently with prison order, discipline, safety and comfort forfeit the right to use the radio. The court concludes that the prison regulation is reasonable and justified. In the absence of any allegation that plaintiff has no other reasonable opportunity to exercise his religious tenets, the court must find that the regulation permitting the confiscation of his radio presents no violation of the inmates constitutional rights.

The regulation is itself religiously neutral; indeed, it probably bears most heavily on the practitioners of the secular and the profane rather than of the religious. While it may be unfortunate that plaintiff's religious rights are burdened, other courts have observed that "[w]hile freedom to believe is absolute, the exercise of religion is not." See Sharp v. Sigler, 408 F.2d 966, 970 (8th Cir. 1969). As the court said in Proffitt v. Ciccone, 506 F.2d 1020, 1021 (8th Cir. 1974), "a person, in or out of prison, may not, in the name of religion, become a law unto himself" but must accomodate himself to reasonable regulations.

Defendant's motion for summary judgment is granted.

DATE: March 16, 1983

Richard L. Williams  
UNITED STATES DISTRICT JUDGE