

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

LAMAR SIMPSON, #1906542  
*Plaintiff*

v.

DIRECTOR, TDCJ-CID, et al.,  
*Defendants*

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CIVIL ACTION NO. 4:15cv644

**MEMORANDUM OPINION AND ORDER**

*Pro se* Plaintiff Lamar Simpson filed a civil rights complaint pursuant to 42 U.S.C. §1983. He claims Defendants violated his constitutional rights while he was incarcerated at the Buster Cole Unit of the Texas Department of Criminal Justice. Plaintiff brings suit against Defendants in their individual capacities and seeks injunctive relief and punitive damages in the amount of five million dollars (\$5,000,000). This Memorandum Opinion and Order concerns Defendants Patton, Pinkston, and Welch’s motion for summary judgment (Dkt. #35), as well as Plaintiff’s response to such motion (Dkt. #39).

**BACKGROUND**

Plaintiff asserts Defendants Sherry Patton and Kathryn Pinkston violated his First Amendment right to freely exercise his Jewish faith by confiscating material he used for religious study. He also claims that his due process rights under the Fourteenth Amendment were violated by Defendant Jerry Welch, Jr., the hearing officer for the disciplinary case in which Plaintiff was found guilty of unauthorized storage of property. Defendants Brad Livingston and Donna Kazmierczak have been dismissed from the case (Dkt. #48). The remaining Defendants are Officers Patton, Pinkston, and Welch.

In Plaintiff’s complaint, he alleges that a dorm search was conducted, and Officer Patton “confiscated religious material claiming it [was] improperly stored [and took] it [by] force.” Plaintiff alleges Officer Pinkston aided “in the confiscation instead of acting where required by employee’s

position.” Prison property records show that four (4) books, nine (9) letters, twenty (20) miscellaneous papers, one (1) pen, four (4) cards, and two (2) Bible study books were confiscated. Plaintiff was then charged in a disciplinary proceeding for the failure to properly store his property. Plaintiff alleges Officer Welch “found me guilty without allowing me to challenge disciplinary sanction[s] (denied witnesses).”

#### **DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

The three remaining Defendants assert they are entitled to summary judgment. Attached to their motion are affidavits from each Defendant as well as grievance, classification, disciplinary, property, and Chaplain’s Office records in support. Defendants assert they are entitled to judgment as a matter of law because:

1. Plaintiff fails to make a *prima facie* First Amendment free exercise claim;
2. Plaintiff fails to make a *prima facie* Fourteenth Amendment claim;
3. Defendants are entitled to qualified immunity;
4. Section 1983 does not create a cause of action based on supervisory liability; and
5. Defendants are entitled to Eleventh Amendment immunity.

#### **PLAINTIFF’S RESPONSE TO MOTION FOR SUMMARY JUDGMENT**

Plaintiff filed a response to the Defendants’ motion for summary judgment. In it, he comments on several pages from the TDCJ records, as well as from affidavits submitted by Defendants. Specifically, Plaintiff accuses each of the officers of being untruthful, and complains they did not follow TDCJ policies.

Plaintiff also attached his own affidavit. In it, he reiterates his claim that, while studying religious materials in his cell, officers entered and ordered the offenders to go into the dayroom. Plaintiff states, that after leaving his books and other personal belongings on his bunk, he heard Officer Patton say that my property “looks to be stored improperly.” Plaintiff reiterates that he believes this is a violation of his First Amendment right to exercise his Jewish religion. He also attaches several other exhibits including an Inter-Office Communications sheet from one of

Plaintiff's cellmates, Victor Moran. In it, Mr. Moran states that officers arrived to do a search and he, as well as Plaintiff, were on their bunks studying. Mr. Moran states that one offender made a verbal statement that caused the dorm to have all property not stored away to be confiscated. Additionally, Plaintiff included his own Inter-Office Communications sheet prepared after the discipline action for improper storage had been settled. In it, he states that, on the day in question, he was looking over legal papers on his bunk, but then began studying the Book of Yahweh Holy Scriptures and the King James Bible. He says he also had a concordance, a Bible dictionary, a regular dictionary, as well as other papers. All of his materials were confiscated.

#### **STATEMENT OF UNDISPUTED MATERIAL FACTS**

The following facts are not in dispute:

1. Plaintiff was an inmate in custody of TDCJ at all times relevant to his claims;
2. Defendants were employed as Corrections Officers for TDCJ at all times relevant to Plaintiff's claims;
3. On May 25, 2015, Defendants Patton and Pinkston were in Plaintiff's housing unit and conducted a search resulting in the confiscation of Plaintiff's religious property;
4. On May 25, 2015, Plaintiff was informed that his property was confiscated because it was improperly stored; and
5. Plaintiff was charged and found guilty of unauthorized storage of personal property.

#### **STANDARD OF REVIEW- MOTION FOR SUMMARY JUDGMENT**

On motions for summary judgment, the court must examine the evidence and inferences drawn therefrom in the light most favorable to the non-moving party. *Sec. and Exch. Comm'n v. Recile*, 10 F.3d 1093, 1097 (5th Cir. 1993); *Gen. Elec. Capital Corp. v. Se. Health Care, Inc.*, 950 F.2d 944, 948 (5th Cir. 1992); Fed. R. Civ. P. 56. After such examination, summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

To avoid summary judgment, the non-moving party must adduce admissible evidence that creates a fact issue concerning existence of every essential component of that party's case – unsubstantiated assertions of actual dispute will not suffice. *Thomas v. Price*, 975 F.2d 231, 235 (5th Cir. 1992), citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The Fifth Circuit stated that, once the moving party has met its burden, the non-movant must direct the court's attention to admissible evidence in the record that demonstrates it can satisfy a fair-minded jury that it is entitled to a verdict in its favor. *ContiCommodity Serv., Inc. v. Ragan*, 63 F.3d 438, 441 (5th Cir. 1995). Once the defendant has shifted the burden to the plaintiff by properly supporting his motion for summary judgment with competent evidence indicating an absence of genuine issues of material fact, the plaintiff cannot meet his burden by some metaphysical doubt as to the material facts, conclusory allegations, unsubstantiated assertions, or by only a scintilla of evidence. *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994); *Michaels v. Avitech Inc.*, 202 F.3d 746, 754-55 (5th Cir. 2000). A properly-supported motion for summary judgment should be granted unless the opposing party produces sufficient evidence to show that a genuine factual issue exists. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). Summary judgment is mandatory when a party fails to establish the existence of an essential element of his case on which that party will bear the burden of proof at trial. *Celotex*, 477 U.S. at 323.

#### **FIRST AMENDMENT CLAIM**

Plaintiff alleges Officers Patton and Pinkston violated his First Amendment right to freely exercise his Jewish faith by confiscating material he used for religious study during a search of his housing unit. Prisoners do not lose all rights to free exercise of religion upon incarceration. *Cruz v. Beto*, 405 U.S. 319, 322 (1972) (per curiam). Nonetheless, a prisoner's free exercise right "is necessarily limited by the fact of incarceration, and may be curtailed in order to achieve legitimate correctional goals or to maintain prison security." *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987). To establish a free exercise violation, an inmate must demonstrate that prison officials prevented him from engaging in religious conduct without any justification related to legitimate

penological concerns. *Turner v. Safely*, 482 U.S. 78, 89 (1987). The Fifth Circuit holds that proper storage of personal property - religious or not - directly and reasonably relates to the legitimate penological goal of maintaining prison security. *Id.* at 89. Courts reviewing conduct alleged to impinge on religious practice ordinarily give wide deference to the judgment of prison officials when their conduct concerns prison security. *Id.* at 89-90 (“judgment regarding prison security are peculiarly within the province and professional expertise of corrections officials”).

Plaintiff’s claim is that his free exercise rights were violated when his religious property was confiscated. He does not challenge a TDCJ policy or bring other claims concerning his right to exercise his religion. Plaintiff cannot prevail on this claim since restrictions on an inmate’s storage space for legal and religious property are reasonably related to legitimate penological interests. *Carrio v. Texas Dept’ of Criminal Justice, Institutional Div.*, 196 F. App’x 266 (5th Cir. 2006). Plaintiff acknowledges being informed that his property was confiscated because it was improperly stored. Plaintiff’s grievance records show that his property was confiscated for being improperly stored “on his bunk and under his mattress.” The affidavit from Officer Patton notes that Plaintiff’s personal items were found under his mattress and also under his storage locker. Finally, Plaintiff’s classification records show that he was charged with, and found guilty of, unauthorized storage of property.

Plaintiff claims that, right after the search, Officer Pinkston told Plaintiff he would receive his property back. However, Plaintiff’s Step 1 Grievance #2015150573 shows that Plaintiff was formally advised that his property would be disposed of in accordance with TDCJ policy. But property records show that Plaintiff was given the opportunity to make a disposition of his confiscated property, but refused to do so. Later-in-time property records show that, eventually, Plaintiff obviously changed his mind, and made arrangements to have his property mailed to Rose L. Simpson. Thus, to the extent Plaintiff seeks injunctive relief for return of his property, that issue is now moot.

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