

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 27 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

HAMILTON HALEY,

Plaintiff - Appellant,

v.

R. J. DONOVAN, Correctional Facility; et
al.,

Defendants - Appellees.

No. 06-55856

D.C. No. CV-02-00732-DMS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Submitted August 20, 2007**

Before: SKOPIL, FARRIS, and BOOCHEVER, Circuit Judges.

Hamilton Haley, a California state prison inmate, appeals pro se from the district court's grant of the defendant prison officials' motion for summary judgment on qualified immunity grounds. We have jurisdiction under 28 U.S.C. §

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

1291, and we affirm.

We review de novo whether it was clearly established in 2001 and 2002, when Haley, a Sikh, was disciplined for refusing to cut his hair, that the California Department of Corrections (CDC) grooming regulations requiring short hair violated the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1(a) (RLUIPA). See Hydrick v. Hunter, 2007 WL 2445998 at *3 (9th Cir. August 30, 2007). In Warsoldier v. Woodford, 418 F.3d 989 (9th Cir. 2005), this court held that an inmate challenging the CDC regulation, 15 Cal. Code Reg. § 3062(e), had shown serious questions going to the merits of his claim that the regulation violated RLUIPA, and we reversed the district court's denial of a preliminary injunction. The regulation imposed a substantial burden on an inmate's practice of his religion, and although it served the compelling interest of prison security, CDC did not demonstrate that it was the least restrictive alternative. Id. at 1000-01.

At the time in 2001 and 2002 when Haley was disciplined for refusing to cut his hair, however, it was not yet clearly established that the defendants' conduct violated RLUIPA. No court in this circuit or any other had addressed whether prison grooming regulations violated RLUIPA. The only Ninth Circuit law regarding similar regulations affecting religiously-mandated hairstyles found that

they did not violate RLUIPA's predecessor statute, the Religious Freedom Restoration Act. See May v. Baldwin, 109 F.3d 557, 565 (9th Cir. 1997). Other circuits had reached similar conclusions. See Diaz v. Collins, 114 F.3d 69, 72-73 (5th Cir. 1997); Harris v. Chapman, 97 F.3d 499, 504 (11th Cir. 1996); Hamilton v. Schriro, 74 F.3d 1545, 1550 (8th Cir. 1996). As this court stated in 2005 in Warsoldier, "There exists little Ninth Circuit authority construing RLUIPA." 418 F.3d at 997 n.7; see Henderson v. Terhune, 379 F.3d 709, 715 n.1 (9th Cir. 2004) ("express[ing] no opinion about whether the CDC's hair length regulation violates [RLUIPA]" where inmate brought First Amendment challenge only). Certainly in 2001 or 2002, it would not have been "clear to a reasonable officer that his conduct was unlawful in the situation he confronted." Saucier v. Katz, 533 U.S. 194, 202 (2001). The defendants were entitled to qualified immunity.

We reject Haley's argument that qualified immunity applies only to constitutional, not statutory rights. See Harlow v. Fitzgerald, 457 U.S. 800, 818-19 (1982).

AFFIRMED.