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Supreme Court, Sullivan County, Holman v. Goord

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SUPREME COURT OF NEW YORK
SULLIVAN COUNTY

Holman v. Goord[1]
(decided June 29, 2006)

David Holman was a Shi'ite Muslim who was incarcerated at the Sullivan Correctional Facility ("SCF").[2] He sought separate Friday Jumah services for Shi'ite and Sunni Muslims on the grounds that the leaders of the services were unduly discriminatory and harsh to Shi'ite Muslims.[3] After his complaint to the Superintendent of the facility was denied, as well as a subsequent administrative appeal, he sought relief from the court by filing an Article 78[4] petition.[5] Holman contended that previous decisions of the New York State Supreme Court and appellate division required SCF to provide the separate services he sought, and he argued that the failure to make such a provision amounted to a denial of his right to free exercise of religion guaranteed by the First Amendment of the United States Constitution,[6] and article I, section 3 of the New York State

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[1] No. 2500-05, 2006 N.Y. Misc. LEXIS 1638, at *1 (Sup. Ct. June 29, 2006).

[2] *Id.*

[3] *Id.*

[4] N.Y.C.P.L.R. § 7801 (McKinney 2006). Article 78 is a set of provisions that authorize an expeditious means to seek judicial review of governmental or official actions made in violation of procedure or that are otherwise arbitrary and capricious in a special proceeding. The administrative decisions of state and local administrative agencies, including the Department of Corrections, generally fall under the jurisdiction of this statute.

[5] *Holman*, 2006 N.Y. Misc. LEXIS 1638, at *1.

[6] U.S. CONST. amend. I states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of

Constitution.[7] The court held that the Department of Correctional Services ("DOCS") had complied with previous court rulings by enacting the Protocol for Shi'ite Muslim Programs and Practices ("Protocol") in response, that provided various services to accommodate inmates' religious practices, and the failure to provide separate services was not a denial of religious expression.[8]

Holman was a prison inmate of Shi'ite Muslim faith who was incarcerated at SCF.[9] He asserted that the facility's failure to provide separate Friday Jumah services for Sunni and Shi'ite Muslims was problematic.[10] The gravaman of Holman's complaint was that the generic services were facilitated by Sunni Muslims whose behavior toward Shi'ite Muslims was not only harsh, but also discriminatory.[11] He first filed a complaint with the Superintendent of SCF, and after an investigation into his allegations, the Deputy Superintendent of Programs for the DOCS concluded that the institution had acted in accordance with Protocol.[12] In denying the request for separate Friday Jumah Services, the Superintendent noted that the Protocol

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the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

[7] *Holman*, 2006 N.Y. Misc. LEXIS 1638, at *3; N.Y. CONST art. I, § 3 states:

> The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all humankind; and no person shall be rendered incompetent to be a witness on account of his or her opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

[8] *Holman*, 2006 N.Y. Misc. LEXIS 1638, at **2-3.

[9] *Id.*, at *1.

[10] *Id.*

[11] *Id.*

[12] *Id.*

provided Shi'ite Muslims with separate religious instructional classes during the week, separate storage facilities, and the opportunity to participate in Friday Jumah Services alongside Sunni Muslim inmates.[13]

Holman proceeded to file a grievance with the Central Office Review Committee of the DOCS, which cited compliance with the Protocol as the basis for upholding the denial of his appeal.[14] With all administrative remedies exhausted, Holman sought relief from the Supreme Court of New York, pursuant to Article 78 of the New York Civil Practice Law and Rules.[15] Holman's complaint alleged that the DOCS Protocol governing religious accommodations for Muslim inmates was discriminatory on two fronts.[16] The substance of his first discrimination argument was that the Protocol failed to comply with the requirements set forth in *Cancel v. Goord*,[17] decided by the Appellate Division, Second Department, which held that the DOCS was required to create a protocol for the accommodation of Shi'ite Muslim religious practices.[18] The second allegation pertained to the absence of any Shi'ite Muslim chaplain at the prison, claiming that the only chaplain was a Sunni Muslim who demeaned Shi'ite Muslims with racial epithets.[19] In response to the *Cancel* decision, the DOCS created the Protocol for Shi'ite Muslim Programs and

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[13] *Holman*, 2006 N.Y. Misc. LEXIS 1638, at *1.
[14] *Id.*
[15] *Id.*
[16] *Id.*, at *2.
[17] 717 N.Y.S.2d 610 (App. Div. 2d Dep't 2000).
[18] *Holman*, 2006 N.Y. Misc. LEXIS 1638, at *2; *see Cancel*, 717 N.Y.S.2d at 612.
[19] *Holman*, 2006 N.Y. Misc. LEXIS 1638, at *2.

Practices which is designed to address Shi'ite grievances.[20] The Protocol's provisions included a prohibition on disparaging remarks by employees in regard to religion, designation of an Islamic center as the official Muslim authority for the DOCS, separate religious classes and facilitators for Shi'ite Muslims, equal Shi'ite Muslim participation in Friday Jumah services with the opportunity for Shi'ite Muslim chaplains to officiate, and inclusion of unique Shi'ite Muslim observances on the DOCS religious calendar.[21]

As for the first issue, the court's analysis turned on the intended meaning of the phrase "separate religious services."[22] Holman argued that this was indicative of the court's intention to require provision of separate Friday Jumah services, but the court noted that DOCS created the Protocol in response to the appellate division's directive, presumably for the purpose of compliance.[23] The court looked to the context of the phrase to clarify any ambiguity and found that its intent was to overrule a lower court decision that directed a specific remedy.[24] The phrase was a reference to the various religious services that the facility may provide in order to accommodate the religious practices of inmates.[25] Thus, the court concluded that the phrase was not a "specific reference to mandate separate Friday Jumah services."[26]

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[20] *Id.*, at *1.
[21] *Id.*, at *2.
[22] *Id.*; *see Cancel*, 717 N.Y.S.2d at 612.
[23] *Holman*, 2006 N.Y. Misc. LEXIS 1638, at **2-3.
[24] *Id.*, at *2.
[25] *Id.*
[26] *Id.*

Holman further argued that the denial of separate Friday Jumah services was tantamount to a denial if his religious liberty.[27] To resolve this issue, the court first noted the sources of religious protection: the First Amendment of the United States Constitution, article I of the New York State Constitution, and New York Correction Law section 610.[28] Then, the court assessed the constitutionality of the challenged conduct using a three part analysis articulated by the Second Circuit. Accordingly, to assess a free exercise claim, a court must determine:

> (1) whether the practice asserted is religious in the person's scheme of beliefs, and whether the belief is sincerely held; (2) whether the challenged practice of the prison officials infringes upon the religious belief; and (3) whether the challenged practice of the prison officials furthers some legitimate penological objective.[29]

In reaching the third part of the analysis, the court presumed that the attendance of Friday Services were within the petitioner's set of religious beliefs, that he sincerely held those beliefs, and that the practices of the DOCS infringed on his beliefs.[30] To determine whether the challenged practice of the prison officials was reasonable in furthering legitimate penological objectives, the court relied on United States Supreme Court precedent.[31] The court found that there

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[27] *Id.*; *see* U.S. CONST. amend I; N.Y. CONST. art. I, § 3; N.Y. CORRECT. LAW § 610 (McKinney 2006).

[28] *Holman*, 2006 N.Y. Misc. LEXIS 1638, at *3.

[29] *Id.* (citing Farid v. Smith, 850 F.2d 917, 926 (2d Cir. 1988)); *see infra* pp. 306-07.

[30] *Holman*, 2006 N.Y. Misc. LEXIS 1638, at *3.

[31] *Id.* Specifically, the court relied on Turner v. Safley, 482 U.S. 78, 89-90 (1987).

was a rational relationship between the DOCS's concerns for the security of inmates and corrections officers, its fiscal and staffing concerns, as well as the restricted availability of space, and the policy of holding one general religious service for the Muslims.[32] The court also concluded that the inmates had adequate alternative means of expressing their religious beliefs, that accommodation of the challenged right would require the DOCS to provide separate services for every religious denomination which could expose the facility to the risk of disastrous consequences, and that there was no ready alternative that would accommodate the asserted right and satisfy the government.[33] The court concluded that the infringement was reasonable in furthering a legitimate penological interest, and this weighed in favor of the SCF.[34] Therefore, it could not be said that SCF acted either in a manner that deprived Holman of his right to religious liberty or contrary to the court's directive in failing to provide separate Friday Jumah services for Sunni Muslims and Shi'ite Muslims.[35]

The court held that SCF had acted in accordance with the Protocol, which contained sufficient provisions to ensure an appropriate balance between the rights of inmates to exercise their religious beliefs and the security concerns of the prison, and was in compliance with the *Cancel* court's instructions.[36]

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[32] *Holman*, 2006 N.Y. Misc. LEXIS 1638, at *3.
[33] *Id.*, at *4.
[34] *Id.*, at **2, 4.
[35] *Id.*, at **3, 4.
[36] *Id.*, at **2-3.

In *Turner v. Safley*,[37] the United States Supreme Court rejected contentions that strict scrutiny was the appropriate standard of review for inmate challenges to prison regulations.[38] The case involved two challenged regulations, one of which restricted correspondence between inmates at the facility and inmates housed at other institutions, while the other regulation restricted inmates' ability to marry so extensively that it effectively prohibited the practice.[39] The petitioning prison officials claimed that the correspondence regulation was implemented on account of security concerns, such as the potential for planning of escapes, assaults on inmates, and the safety of inmates transferred to the facility for the purpose of being housed in protective custody.[40] The officials claimed the marriage regulation was justified by a reasonable relationship to general concerns of security and rehabilitation.[41] The Court opined that "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests."[42]

Turner provided four factors to be considered by courts in making this discretionary determination of reasonableness.[43] First, there must be a valid and rational connection between the challenged prison regulation and the legitimate governmental interest asserted as

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[37] 482 U.S. 78 (1987).
[38] *Id.* at 89.
[39] *Id.* at 81-82.
[40] *Id.* at 91.
[41] *Id.* at 95.
[42] *Turner*, 482 U.S. at 89.
[43] *Id.* at 89-90.

its justification.[44] Second, the court must assess the availability of alternative means in which inmates are capable of expressing the asserted right.[45] Third, the impact that the accommodation of the asserted right will have on guards, inmates, and the allocation of prison resources must be evaluated.[46] The fourth consideration is the extent to which the regulation represents an "exaggerated response" to prison concerns, with evidence of a ready alternative which would remedy the deprivation of the right at minimal expense to penological objectives to be considered evidence that the regulation is unreasonable.[47]

The Court held that the regulation restricting inmate marriage was facially invalid, explaining that it was so speculative that it lacked a reasonable relationship to any legitimate penological interest, and was therefore constitutionally infirm.[48] *Turner*, however, upheld the challenged regulation pertaining to correspondence between inmates in different institutions, concluding it was reasonably related to legitimate security interests, and therefore was a choice made by prison officials "within the province and professional expertise" that should not easily be disturbed by the court.[49]

Eight days after the Court decided *Turner*, the Court decided

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[44] *Id.* at 89.
[45] *Id.* at 90.
[46] *Id.*
[47] *Turner*, 482 U.S. at 90.
[48] *Id.* at 82, 97, 99-100.
[49] *Id.* at 81, 91, 92-93 (quoting Pell v. Procunier, 417 U.S. 817, 827 (1974)).

O'Lone v. Estate of Shabazz,[50] which also involved prisoners challenging a corrections policy. In *Shabazz*, the petitioners claimed that a prison regulation violated their First Amendment rights to free exercise of religious beliefs.[51] The challenged regulation pertained to inmate employment, but had the incidental effect of inhibiting the petitioners' ability to attend Friday Jumah services.[52] Conceding that the regulation "effectively prohibit[ed]" the asserted right, as opposed to exacting a minor infringement on the manner of its exercise, the Court steadfastly refused to apply a heightened scrutiny test in determining regulation's constitutionality, which would charge the prison with demonstrating the absence of a feasible alternative to achieve the asserted penological objective.[53]

The Court addressed the reasonableness of this regulation using the four *Turner* factors.[54] Applying the factors, the Court concluded that the regulation was reasonably related to a legitimate penological objective, there was no alternative way for the inmates to exercise the asserted right, accommodation of the right would adversely affect inmates and prison staff, and there were no ready alternatives that would allow the right to be accommodated without jeopardizing important interests.[55] The *Shabazz* opinion declared that inmates retain protections afforded by the First Amendment,

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[50] 482 U.S. 342 (1987).

[51] *Id.* at 347. *See* U.S. CONST. amend I.

[52] *Shabazz*, 482 U.S. at 347. As in *Holman*, the petitioners in *Shabazz* were also Muslims seeking to attend Friday Jumah services. *Id.*

[53] *Id.* at 350 n.2.

[54] *Id.* at 350-53.

[55] *Id.*

"including its directive that no law shall prohibit the free exercise of religion."[56] However, it was explicit that "lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction that is justified by the considerations underlying our penal system."[57] Thus, *Shabazz* held that a reasonableness standard of analysis is applicable to claims of infringement upon the First Amendment rights of prisoners, under which deprivation of the protection guaranteed by those rights is permissible if there a reasonable relationship between the adversely affected right and the penological interest asserted.[58] The practical effect of the *Shabazz* holding was affirmation of the notion that great deference must be afforded by the reviewing courts to the decisions made by prison officials.[59]

The petitioner in *Farid v. Smith*[60] sought relief from a prison regulation that addressed the disposal of prohibited items arriving at the facility via mail.[61] He contended that the facility's seizure of a set of tarot cards that had been sent to him was a violation of constitutional rights protected by the Free Exercise Clause of the First

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[56] *Id.* at 348.

[57] *Shabazz*, 482 U.S. at 348.

[58] *Id.* at 351-52 ("While we in no way minimize the central importance of Jumu'ah [sic] to respondents, we are unwilling to hold that prison officials are required by the Constitution to sacrifice legitimate penological objectives to that end.").

[59] *Id.* at 353 ("We take this opportunity to reaffirm our refusal, even where claims are made under the First Amendment, to 'substitute our judgment on . . . difficult and sensitive matters of institutional administration,' for the determinations of those charged with the formidable task of running a prison." (quoting Block v. Rutherford, 468 U.S. 576, 588 (1984))).

[60] 850 F.2d 917 (2d Cir. 1988).

[61] *Id.* at 919.

Amendment.[62] The Unites States Court of Appeals for the Second Circuit explained that to assess a First Amendment Free Exercise claim, a court must make three determinations: "(1) whether the practice asserted is religious in the person's scheme of beliefs, and whether the belief is sincerely held; (2) whether the challenged practice of the prison officials infringes upon the religious belief; and (3) whether the challenged practice of the prison officials furthers some legitimate penological objective."[63] The court held that the responding institution was entitled to summary judgment because the petitioner failed to properly plead or offer evidence in support of this particular claim, but the substance of its analysis provided significant guidance for courts to assess asserted violations of prisoners' First Amendment rights.[64]

In *Brown v. McGinnis*,[65] the New York Court of Appeals granted relief to an inmate that claimed the facility's refusal to allow his consultation with a convicted felon, the leader of a local Nation of Islam congregation, violated his freedom of worship and religious liberty.[66] Specifically, the petitioner asserted that he was entitled to seek spiritual advice under section 610 of the New York State Corrections Law[67] which codifies and implements the state

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[62] *Id.* at 920.

[63] *Id.* at 926 (citing Kent v. Johnson, 821 F.2d 1220, 1224-25 (6th Cir. 1987); Hill v. Blackwell, 774 F.2d 338, 342-43 (8th Cir. 1985)).

[64] *Id.*

[65] 180 N.E.2d 791 (N.Y. 1962).

[66] *Id.* at 791-92.

[67] N.Y. CORRECT. LAW § 610(1)-(3) provides in pertinent part:

> The rules and regulations established for the government of the institutions mentioned in this section shall recognize the right of the inmates to the free exercise of their religious belief . . . such services to

constitutional guarantee of religious expression for inmates.[68] The facility responded by insisting that the statutory provision granting inmates religious rights was not absolute, stating that rules and regulations were permissible as needed for the government of the institution, and supported its contention that its actions were necessary with cutouts of newspaper and magazine articles referring to the temple of Islam as a Muslim cult.[69] The court held that "[f]reedom of exercise of religious worship is not an absolute but rather a preferred right; it cannot interfere with the laws which the State enacts for its preservation, safety or welfare. While freedom to believe is absolute, freedom to act is not."[70] The court remanded the case for a determination of what relief the petitioner was entitled to, explaining that although the commissioner may restrict the rights afforded to prisoners to an extent deemed necessary to curtail dangers, the mere speculation that a danger may be presented is insufficient to deny the prisoner participation in religious activities.[71]

In *Cancel*, the petitioner was a Shi'ite Muslim inmate who asserted that practices by the DOCS within the facility violated his rights to religious freedom.[72] The challenged policy provided religious services for Muslims, but was argued to be insufficient, as

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> be held and such advice and ministration to be given . . . in such manner and at such hours as will be in harmony, as aforesaid, with the discipline and regulations of the institution.

[68] *McGinnis*, 180 N.E.2d at 791.

[69] *Id.* at 792-93.

[70] *Id.* at 793 (citing People v. Sandstrom, 18 N.E.2d 840, 842 (N.Y. 1939); Cantwell v. Connecticut, 310 U.S. 296, 303-04 (1940)).

[71] *Id.*

[72] *Cancel*, 717 N.Y.S.2d at 611. The court refers to Shi'ite Muslims as "Shi'a" Muslims in this case. The word "Shi'ite" is used uniformly here in accordance with the *Holman*

the only service provided was run by a Sunni Sect of Islamic faith that administered services inconsistent with, and actually antagonistic to Shi'ite Muslims.[73] The DOCS denied the petitioners grievance, explaining that the services were provided for followers of Islam, and the Inman[74] had advised the facility that all Muslim religious groups fall under Islam.[75] The petitioner sought Article 78 review of the decision in the Supreme Court of New York.[76] The court held that the DOCS's denial of the petitioner's grievance was not supported by a rational basis, and was therefore arbitrary, capricious, and in violation of section 610 of the New York State Correction Law.[77] Specifically, the court noted that the grievance was denied based on the opinion of the very individual that was alleged to have been responsible for the acts of discrimination contained in the grievance, meaning it was potentially biased, and in addition, it was not sworn to or affirmed in any submission to the court.[78] Based on these findings, the court ordered the case remitted the matter to the "DOCS to conduct administrative proceedings, with Shi'a participation, to determine the manner in which to best afford Shi'a inmates separate religious services, under appropriate Shi'a religious leadership, in a

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court's interpretation.

[73] *Id.*

[74] *Id.* "The DOCS uses the term 'Inman' to describe the Muslim religious authority in charge of Muslim ecclesiastical matters within its facilities." The petitioner used the term "Inman" or "Imam" in his submissions. The court explained that according to Webster's Third New International Dictionary, Muslim scholars are among those religious authorities within the definition of "Imam." *Id.* (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY).

[75] *Id.*

[76] *Id.* at 610.

[77] *Cancel*, 717 N.Y.S.2d at 612.

[78] *Id.* at 611-12.

time and place that comport with legitimate penological concerns."[79]

To conclude, the court's review of the claims set forth in *Holman* was consistent with that set forth for the analysis of similar claims by the United States Supreme Court. The protections of religious expression articulated in Article 610 of the New York State Correction Law are no greater than those afforded by the Court's interpretation of rights provided by the Federal Constitution. Courts interpreting the state statutory and federal constitutional provisions are clearly in agreement that religious freedoms of inmates are adequately protected and that the decisions made by prison officials shall only be disturbed when deemed arbitrary, capricious, or a flagrant abuse of discretion. As a result, New York's statutory promulgation of the state's constitutional protection of religious expression as it pertains to prison inmates has no appreciable distinction in application from that provided by the Federal Constitution, which is measured in compliance by an analysis rooted in precedent.

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[79] *Id.* at 612. The supreme court granted specific relief, but the appellate division modified the remedy to allow DOCS to follow the directive in a manner that was consistent with penological concerns. *Id.*