19-6985

ORIGINAL

No._____

IN THE SUPREME COURT OF THE UNITED STATES

BOAZ PLEASANT-BEY
Petitioner

V.

SHELBY COUNTY GOVERNMENT, ET AL,.
Respondents.

On Petition For Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Boaz Pleasant-Bey #473110
T.T.C.C.
140 Macon Way
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QUESTIONS PRESENTED

I.) WHETHER RLUIPA'S "APPROPRIATE RELIEF" CLAUSE ENCOMPASSES THE REQUESTED RELIEF OF A TRIAL ON THE MERITS AND IF SO, DID PLAINTIFF'S REQUEST OF A TRIAL ON THE MERITS IN HIS COMPLAINT ENTITLE HIM TO THE APPROPRIATE RELIEF OF A TRIAL ON THE MERITS CONCERNING RLUIPA, AND DID THE SIXTH CIRCUIT COURT OF APPEALS ERR IN FAILING TO CONSIDER PLAINTIFF'S APPROPRIATE RELIEF ARGUMENT IN HIS REPLY BRIEF?

II.) WHETHER THE 1st CIRCUIT'S RULING IN SPRATT AND THE 6th CIRCUIT'S RULING IN SPIES CONFLICT EACHOTHER CONCERNING WHETHER INMATE-LED IS CONSTITUTIONAL AND/OR PERMISSIBLE UNDER RLUIPA, AND IF SO, IS THE SPRATT COURT CORRECT AND IF NOT, WHY IS THE SPIES COURT CORRECT?

III.) WHETHER THE GENERAL APPELLATE RULE THAT PROHIBITS CLAIMS FROM BEING ADDRESSED BY APPELLATE COURTS ARE NOT RAISED ON APPEAL APPLY TO A DEFENDANT'S DEFENSES AND A PLAINTIFF'S ISSUES, AND IF SO DID THE DEFENDANTS FAILURE TO TAKE THEIR TWO OPPORTUNITIES TO RAISE THEIR QUALIFIED IMMUNITY ARGUMENTS TO THE 6th CIRCUIT OF THE APPEALS IN THE TWO APPEALS IN THIS CASE CAUSE THAT DEFENSE TO BE WAIVED ON REMAND?

PARTIES TO THE PROCEEDING BELOW

The following parties were named as Defendants in the United States District Court, and Appellees in the United States Court of Appeals for the Sixth Circuit: Shelby County, Robert Moore, Roy Rodgers, J. Hawkins, E. Coleman, Rod Bowers, and Charline M°Ghee. Mr. Boaz Pleasant-Bey was the Plaintiff in the United States District Court for the Western District of Tennessee, Western Division, and he was the Appellant in the United States Court of Appeals for the Sixth Circuit.

TABLE OF CONTENTS

I.) RLUIPA'S "APPROPRIATE RELIEF" CLAUSE ENCOMPASSES PLAINTIFF'S REQUESTED RELIEF OF ALLOWING A TRIAL ON THE MERITS ON CLAIMS HE BROUGHT PRUSUANT TO IT. RLUIPA'S APPROPRIATE RELIEF CLAUSE IS NOT ONLY LIMITED TO INJUNCTIVE RELIEF. THE DEFENDANTS ALSO DEMANDED A TRIAL ON THE MERITS.

II.) ONE OF THE REASONS FOR GRANTING CERTIORARI IS THE NEED TO MAKE UNIFORM LAW CONCERNING CONFLICTING OPINIONS AMONGST THE U.S. CIRCUIT COURTS ON THE SAME MATTER. THE 6th CIRCUIT HELD IN SPIES THAT INMATES CANNOT HAVE INMATE-LED RELIGIOUS SERVICES. THE 1st CIRCUIT HELD THAT INMATE-LED SERVICES, IN THE PRESENCE OF THE PRISON CHAPLAIN, IS NOT A THREAT TO INSTITUTIONAL SECURITY, AND PROHIBITING SUCH ACTIVITY IN THE PRESENCE OF THE PRISON CHAPLAIN WOULD BE VIOLATIVE OF THE 1ST AMENDMENT FREE EXERCISE CLAUSE AND RLUIPA.

III.) THE GENERAL APPELLATE RULE THAT CLAIMS NOT RAISED ON APPEAL ARE NOT REVIEWABLE ON APPEAL OR ON REMAND AFTER APPEAL IS EQUALLY APPLICABLE TO A DEFENDANT'S DEFENSE AS WELL AAS A PLAINTIFF'S CLAIMS. THE NEED FOR THIS RULE IS TO MINIMIZE UNNECESSARY JUDICIAL RESOURCES BY REARGUING DIFFERENT DEFENSES, OR REARGUING THE SAME DEFENSES AS A STRATEGY TO PROLONG PROCEEDINGS, HAMPER PLAINTIFF'S CASE, OR CAUSE UNDULY DELAY.

TABLE OF AUTHORITIES

STATUTES

PETITION FOR WRIT OF CERTIORARI

Petitioner Boaz Pleasant-Bey respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW AND JURISDICTION

The unpublished opinion from the United States District Court as: Pleasant-Bey V. Shelby County, et al., 2018 U.S. Dist. LEXIS 152864, No. 2:11cv-02138-TLP-tmp (W.D. Tenn. Sept. 7, 2018) and the unpublished opinion from the United States Court of Appeals for the Sixth Circuit is annexed hereto as Exhibit A. The United States Supreme Court has jurisdiction under 28 U.S.C. § 1254(1)

CONSTITUTIONAL PROVISIONS

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. Amend. 1

Statement of the Case

The Petitioner filed suit in 2011 against Shelby County, the Sheriff of Shelby County, Commander Rodgers, Chaplain Hawkins, Chief James Coleman, Chief Robert Moore, Chief Rod Bowers and Chief Charline M°Ghee. Pleasant-Bey "a Muslim then housed on the fourth floor of the Jail, asserted that the defendants violated his civil rights". Ex. A Pleasant-Bey V. Shelby County, et al., Cir. No. 18-6063, at Pg. 1 (6th Cir. Nov. 7th 2019) The district court granted the Petitioner's motion to amend and entered a partial order of dismissal. Id at Pg 2 The remaining Defendants moved for summary judgment and the Petitioner filed a hybrid response and motion for judgment on the pleadings with a second motion to amend. The district court granted Defendants motion based upon grounds that Petitioner's claims were unexhausted. Ibid The 6th Circuit reversed in part and affirmed in part, finding that "there were genuine factual disputes regarding exhaustion" and "vacated the denial of the second motion to amend." Id at Pg. 3 On remand Defendants moved for summary judgment again and the Petitioner filed a cross-motion for summary judgment with three motions to amend. The motions to amend were denied and the district court granted Defendants summary judgment in favor of defendants concluding that the Petitioner was not entitled to relief under § 1983. Id at Pg. 3-4 Petitioner appealed to the 6th Circuit Court of Appeals and the 6th Circuit reversed in part and remanded in part. Id at Pg. 9-10 The Petitioner now petitions to the United States Supreme Court to partial review the ruling of the 6th Circuit Court of Appeals' Order Nov. 7th 2019.

Statement of Facts

The Petitioner was housed on the 4th Floor of the Shelby County Jail "Jail" in 2010-2011. While he was housed there, he noticed that the Defendants Shelby County, Robert Moore, Chief Rod Bowers, Chief Charline M°Ghee, Commander Roy Rodgers, Chaplain Hawkins, and Chaplain Davis prohibited the Islamic practice of Traditional Jumu'ah Services. Traditional Jumu'ah Services consists of a Khutbah [Sermon] divided into two halves, followed by Jumu'ah Ṣalah [Prayer]. Jumu'ah Ṣalah consists of two Rak'ah [Units of Prayer]. Any change in the Traditional structure and practices of Jumu'ah Services is Bidda' [A Prohibited Innovation] and Haram [Strictly Forbidden]. If Jumu'ah Services are changed within it's structure, it is no longer Jumu'ah Service within the meaning of the Qur'an and Sunnah of Prophet Muhammad ﷺ, but another form of Religion not practiced by Muslims around the world. (D.E. No. 59-2, Pg. 1-2 Affidavit of Plaintiff at 1-2); D.E. No. 59-6 (Affidavit of

Hamud at Pg. 1-2)

Those Defendants implemented Shelby County Sheriff's Office [SCSO] Policy 502.08 (1)-(2) that mandated all Religious Services at the Jail had to be conducted by a Religious Leader [Chaplain] or an approved volunteer, and no inmates will be placed in a position of religious aughority or leadership over another inmate for group services. D.E. No. 59-7 at Pg. 12 (SCSO Policy 502.02 (1)-(2)) The Defendants hired three (3) Christian Chaplains to assure that weekly Christian Services were conducted on the 4th Floor of the Jail despite the fact that the 4th Floor is considered to be where inmates are housed who have the highest security risks and/or have a history involving assaultive behavior. D.E. 59-7 AT Pg. 5 Affidavit of Moore[1]; D.E. No. 59-7 at Pg. 2 ("The SCSO Provides paid volunteer Chaplains or Religious Leaders")

At the time this case commenced, there were three hired Chaplains who were paid by the SCSO to give weekly Church Services on the 4th Floor, but there were no Muslim Chaplains hired by the SCSO to give equal Jumu'ah Services every week. D.E. No. 59-7 at Pg. 2 ("An effort is underway to hire an Imam to provide services at the Jail."); D.E. No. 1 Compl. Pg. 4 (Defendants "Refused to ensure the Plaintiff and Muslim inmates have regular weekly Jumu'ah Services by hiring a qualified Imam who is available in Memphis to be hired at the Jail.") In light of SCSO Policy 502.08 (1)-(2), the Plaintiff was unable to have weekly Jumu'ah Services from February 15th 2010 to February 15th 2011 because Hassan, the volunteer Imam was unable to provide services that year, except for three Fridays for only about fifteen (15) minutes. D.E. No. 59-2 at Pg. 2 and Pg. 4) The Defendants never made any attempts to hire Hassan, who was qualified to provide weekly Traditional Jumu'ah Services, but they hired Chaplain D. Muhammad who follows the Nation of Islam[2]. Ex. A Pleasant-Bey V. Shelby Co., et al., No. 18-6063, Order of 6th Cir. Filed Nov. 7th 2019 at Pg. 6 (Noting that in 2012, "the Jail was able" to hire a Muslim Imam)

1 All of the Defendants have submitted the same affidavits. D.E. No. 59-7; D.E. No. 59-8; D.E. No. 59-9; D.E. No. 59-10; D.E. No. 59-11; D.E. No. 59-12 and D.E. No. 59-13

2 The Nation of Islam does not have Traditional Jumu'ah Services every week, and they are an ethnic group that believes Elijah Muhammad was like a prophet to the black man in America. The Petitioner does not hold beliefs of the Nation of Islam, but holds beliefs of following the Qur'an and Sunnah of Prophet Muhammad Ibn Abdullah ﷺ born in 570 C.E.

The Jail's Own Prayer Only Service

The Defendants in light of SCSO Policy 502.08 (1)-(2) changed the structure of Traditional Jumu'ah Service to be a "Prayer Only Service" [Hereinafter "JPOS"] without any Khutbah, only with a Ṣalah. D.E. 59-7 at pg. 6 ("If the Imam is unable to attend, the inmates join in communal prayer for as long as they wish, usually less than 20 minutes. A full-time Religious Leader or Chaplain is typically present.") The JPOS was governed by the Gang Intelligence Unit [GIU] who would limit those services to having only nine (9) inmates from three (3) pods [housing units] and would usually be shortened to only five (5) to seven (7) minutes. D.E. 69-4 Affidavit of Robinson ("The Muslims had to pray for about 5-7 minutes and return back to their pods. The GIU was present at all of the Friday Muslim Jumu'ah Services and security governed those services in a manner that did not allow the Muslims to have proper services for an hour and a half like the Christian Services."); Affidavit of Moore 59-7, Pg. 5-6 (Swearing that, "On the 4th Floor, officers assigned to the...GIU provide security for Jumu'ah Services...if inmates are committing institutional violations [i.e. giving a Khutbah (Sermon)] they will intervene...")

Jumu'ah Ṣalah Defined

Muslims cannot make communal Ṣalah unless they elect an Imam [Leader] from amongst themselves to pray because the Imam leads the others in Ṣalah while they follow his instructions through the prayer while they are structured in rows upon rows behind him. D.E. 59-6 at Pg.1 Affidavit of Hamud ("The Imam who leads congregational Ṣalah is in front while the Muslims align themselves in rows upon rows behind [him].") The Plaintiff was continuously elected in a "leadership position as Imam" to lead the JPOS every time the volunteer Imam was not present, leading eight other inmates in violation of SCSO Policy 502.08 (1)-(2). D.E. No. 59-2 at Pg. 4 ("The JPOS held from Feb. 15th 2010 to Feb. 15th 2011 were usually led by me. I led the Muslim prayer for the JPOS. According to Islamic tradition, no group worship can be held without an Imam being elected to lead the Ṣalah. I was elected as the Imam to lead the JPOS. I was in a leadership position leading the JPOS every week from Feb. 15th 2010 – Feb. 15th 2011.") The Defendants imposed SCSO Policy 502.08 (1)-(2) to prohibit the Plaintiff from reading the Qur'an and rejoicing about the worship of Allah to the inmates at the Jail.

REASONS FOR GRANTING THE WRIT

I.) RLUIPA'S "APPROPRIATE RELIEF" CLAUSE ENCOMPASSES PLAINTIFF'S REQUESTED RELIEF OF ALLOWING A TRIAL ON THE MERITS ON CLAIMS HE BROUGHT PRUSUANT TO IT. RLUIPA'S APPROPRIATE RELIEF CLAUSE IS NOT ONLY LIMITED TO INJUNCTIVE RELIEF. THE DEFENDANTS ALSO DEMANDED A TRIAL ON THE MERITS.

"[A] person may assert a violation of this Act as a claim or defense in a judicial proceeding and obtain appropriate relief against a government." 42 U.S.C. § 2000cc-2 (a) In this case, the Plaintiff sought both injunctive relief and relief of a trial on the merits. D.E. 1 Compl. at Pg. 7 (Plaintiff's relief requested "Set this case for trial."); D.E. No. 32 at Pg. 1 Defendants' Motion for Summary Judgment (Front Page in Bold Letters "**Jury Demanded**"); D.E. 59-7 et seq. Defendant's Affidavits ("**Jury Demanded**") Injunctive relief is moot due to Petitioner being transferred from the Jail to the Tennessee Department of Corrections. However, a trial on the merits is the appropriate requested relief which does not dissipate with transference of the Petitioner from one facility or prison to another. Also, a requested trial on the merits allows RLUIPA claims to be addressed despite Petitioner's transfer to another facility. Otherwise, prisons and jails would just transfer a RLUIPA claimant in retaliation to the case to avoid being responsible for their actions, causing the actions to continue to go on after transfer of the claimant. 42 U.S.C. § 2000cc-2 (a); Astoria Fed. Sav. & Loans Ass'n V. Solimino, 501 U.S. 104, 112 (1991) ("we construe statutes, where possible so as to avoid rendering superfluous any parts thereof".) RLUIPA's appropriate relief provision is not in any way written to circumscribe it's bounty to the only the circumference of the jurisdictional limitations of injunctive relief. Id The Petitioner raised RLUIPA's appropriate relief provision regarding the issue of his request for a trial on the merits in his reply brief in the 6th Circuit, but the 6th Circuit did not address the issue before it. D.E. 1 Compl. at Pg. 7

II.) ONE OF THE REASONS FOR GRANTING CERTIORARI IS THE NEED TO MAKE UNIFORM LAW CONCERNING CONFLICTING OPINIONS AMONGST THE U.S. CIRCUIT COURTS ON THE SAME MATTER. THE 6th CIRCUIT HELD IN SPIES THAT INMATES CANNOT HAVE INMATE-LED RELIGIOUS SERVICES. THE 1st CIRCUIT HELD THAT INMATE-LED SERVICES, IN THE PRESENCE OF THE PRISON CHAPLAIN, IS NOT A THREAT TO INSTITUTIONAL SECURITY, AND PROHIBITING SUCH ACTIVITY IN THE PRESENCE OF THE PRISON CHAPLAIN WOULD BE VIOLATIVE OF THE 1ST AMENDMENT FREE EXERCISE CLAUSE AND RLUIPA.

The "prohibition on inmate-led groups" exists "to avoid the risks that would arise from unsupervised inmate activity and the creation of an alternate, inmate-led power structure in the prison". Spies V. Voinovich, 173 F.3d 398, 405-06 (6th Cir. 1999); Exhibit A, Pleasant-Bey V. Shelby Co., et al., No. 18-6063, at Pg. 7 (Order of 6th Cir. Filed Nov. 7th 2019) (citing Spies) In Spies, the 6th Circuit upheld prison policy prohibiting "inmate-led" religious services. Id However, despite the Defendants arguing that their policy prohibiting inmate-led religious services [inmate preaching] because they have "a compelling state interest in maintaining prison security." (Spratt V Rhode Island Department of Corrections, 482 F.3d 33, 39 (1st Cir. 2007) In this case, the Defendants argued that the Jail's blanket ban on inmate preaching was established because it "prohibits any and all prisoners from having a position of religious leadership...over other prisoners or religious services...to maintain all prisoners on an equal basis for security purposes." Exhibit A, Pleasant-Bey, No. 18-6063 at Pg. 6-7 Similarly, the Defendants in Spratt argued that: "...if Spratt is a preacher, he is a leader; having leaders in prison (even those sanctioned by the administration is detrimental to prison security; thus, Spratt's preaching activity is detrimental to prison security. 482 F. 3d at 39 ("But to prevail on summary judgment, RIDOC "must do more than merely assert a security concern.") (citing Murphy V. Mo. Dep't of Corr., 372 F.3d 979, 988 (8th Cir. 2004)).

The 1st Circuit held: "Whereas, it is quite easy to see how armed prisoners granted nearly indiscriminate authority to brutalize fellow prisoners are a threat to institutional security, the same cannot be said about a preacher who offers a weekly sermon under the direction of the prison chaplain." Ibid Clearly, the facts of this case distinguishes it from others because GIU [Security] was present in the Friday Jumu'ah Services along with the Chaplain. D.E. 69-4 Affidavit of Robinson; Exhibit A, Pleasant-Bey, No. 18-6063 at Pg. 7 (Moore "acknowledge that the GIU provided security at Jumu'ah Services but stated that it did not intervene in the absence of an institutional violation [give a Khtbah]."); D.E. 59-7 at pg. 6 ("If the Imam is unable to attend, the inmates join in communal prayer for as long as they wish, usually less than 20 minutes. *A full-time Religious Leader or Chaplain is typically present.*") With security and the chaplain both present, the issue of a "security concern" is removed, and it would be constitutionally unjust for the Peitioner to be denied the right to elect a qualified inmate as Imam or to be elected as Imam to give a Khutbah and lead the Traditional Jumu'ah Salah. Id; Exhibit A Pleasant-Bey, at Pg. 6 ("Pleasant-Bey contends that Jail Policy violated his Free Exercise rights by prohibiting prisoners from conducting religious services, which deprived him of his

religious right to elect a qualified prisoner to be the Imam and deprived him personally of the opportunity to be elected Imam.") With both security and the chaplain both present, depriving Plaintiff of the right to be Imam or to elect a qualified Imam to give a Traditional Jumu'ah Service Khutbah and lead Traditional Jumu'ah Salah is not "reasonably related to any legitimate penological interests" (Turner V. Safley, 482 U.S. 78, 89 (1987); U.S. Const. Amend. I) nor is it "in furtherance of a compelling governmental interest" or the "least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000cc-1(a)

Conclusively, due to the fact that the GIU and the Chaplain were both present at the Friday Jumu'ah Services, "the risks that would arise from unsupervised inmate activity" and "the creation of an alternate, inmate-led power structure in the" jail (Spies V. Voinovich, 173 F.3d 398, 405-06 (6th Cir. 1999)) was no longer there because those services were closely monitored and supervised by GIU and the Chaplain. (Id) These conflicting opinions amongst the sister circuit courts of appeals does prompt this Court to decide the matter by granting certiorari, because the violation of Muslim rights, whether in prison or in society,

III.) THE GENERAL APPELLATE RULE THAT CLAIMS NOT RAISED ON APPEAL ARE NOT REVIEWABLE ON APPEAL OR ON REMAND AFTER APPEAL IS EQUALLY APPLICABLE TO A DEFENDANT'S DEFENSE AS WELL AAS A PLAINTIFF'S CLAIMS. THE NEED FOR THIS RULE IS TO MINIMIZE UNNECESSARY JUDICIAL RESOURCES BY REARGUING DIFFERENT DEFENSES, OR REARGUING THE SAME DEFENSES AS A STRATEGY TO PROLONG PROCEEDINGS, HAMPER PLAINTIFF'S CASE, OR CAUSE UNDULY DELAY.

"[B]ecause the district court granted summary judgment to the defendants on other grounds, and...did not brief the issue on appeal...But the Defendants may take up the issue on remand." Pleasant-Bey, at Pg. 10 The 6th Circuit noted that the Defendants raised the qualified immunity defense in their "initial motion to dismiss and again in their supplemental summary-judgment motion." Id at pg. 9 The Defendant failed to raise that defense on appeal in the first appeal in this case, and the second appeal. (Id at Pg. 2 citing Pleasant-Bey, No. 12-6223 (6th Cir. Oct. 17th 2014); See 28 U.S.C. § 2101(e). Rule 11 of the Rules of the United States Supreme Court provide: "A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify

deviation from normal appellate practice and to require immediate determination in this Court." This case involves depriving Muslims of their rights to practice the ability to equally do so, as they equally do so.

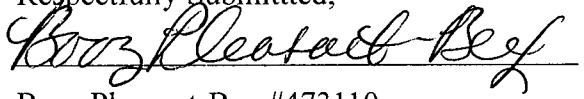
"Issues raised in the district court but not raised on appeal are not considered these claims..." and noting "Pleasant-Bey arguably brought claims 1, 4 and 5 pursuant to the Free Exercise and Exercise ..." D.E. Pleasant-Bey Had Petitioner failed to bring those claims pursuant to both Free Exercise, and Equal Protections happened to know these were present issue, he would have been told by the 6th Circuit and the District Court that he cannot relitigate issues not raised on appeal, or on remand after appeals over. Id This one-sided rule of law is often applied to always be bias towards a Plaintiff rearguing those issues over and over again. This rule equally applies to the Defendants, who are not above the law in this case.

CONCLUSION

Conclusively, RLUIPA's Appropriate Relief Clause does encompass the relief of a trial on the merits on RLUIPA issues; this Court should grant the Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit to make a uniform decision between the 1st Circuit and the 6th Circuit Court of Appeals; and the general rule that issues not raised on appeal are abandoned or waived is applicable to a Defendant's Defense as well as a Plaintiff's claims and it does not discriminate between the two parties.

WHEREFORE, THE PREMISES IS CONSIDERED, the Plaintiff thus requests that this Court grant the Writ of Certiorari and schedule briefing in this case on the three issues enlisted above.

Respectfully Submittted,



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Certificate of Compliance

I, Boaz Pleasant-Bey, certify and declare that the foregoing is in the best compliance to the United States Supreme Court rules as I possibly can under the circumstances of my incarcerated conditions.

Certificate of Service

I, Boaz Pleasant-Bey, certify and declare that I have to mailed a copy to Defense Counsel for Shelby County and to the United States District Court Clerk on this 12th day of December 2019.

EXHIBIT A

PLEASANT-BEY V. SHELBY COUNTY, ET AL, NO. 18-6063 (Nov. 7th 2019 6th Cir.)