

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-283

MARCH TERM, 2006

Byron Martin

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APPEALED FROM:

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v.

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Windsor Superior Court

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Steven Gold, Keith Tallon, Superintendent and

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Michael Kitchen Foisy, Supervisor

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DOCKET NO. 536-10-04 Wrcv

Trial Judge: Theresa S. DiMauro

In the above-entitled cause, the Clerk will enter:

Prisoner appeals the trial court=s order dismissing his claims based on prisoner=s request for a vegetarian diet while incarcerated in Vermont. We affirm.

The basic facts are not in dispute. Prisoner, who had previously been incarcerated in Kentucky, was transferred to a facility in Vermont for health reasons from July 5, 2004 through February 27, 2005.^[1] Prisoner was then returned to Kentucky, although he claims that he is entitled to return to Vermont in the near future to participate in a work-camp program. During his time in Vermont, prisoner requested but was denied a vegetarian diet. His request was based on religious beliefs. On October 25, 2004, prisoner filed a complaint under Vermont Rule of Civil Procedure 75, challenging the Vermont facility's denial of his request for a vegetarian diet as well as other alleged violations not at issue here. The Department of Corrections moved to dismiss the complaint. The trial court denied the DOC's motion to dismiss, concluding that prisoner's grievances had provided the DOC with sufficient notice of the nature of his complaint and allowing the parties thirty days to address the issue administratively. In the interim, prisoner had been returned to Kentucky, where he is provided a vegetarian diet, and the DOC moved to dismiss prisoner's complaint as moot.

In response, prisoner argued (1) the claim was not moot because he would be returning to Vermont to participate in a work camp program, and (2) alternatively, he should be granted a declaratory judgment to recognize the past violation of his rights. At a July 11, 2005 status conference, the trial court determined that, because prisoner was now receiving a vegetarian diet in the Kentucky facility, his claim was moot. As such, neither relief under Rule 75 nor declaratory relief was available. The trial court further concluded that prisoner had not shown any likelihood that he would be returning to a Vermont facility and be subject to the same deprivation, taking note of an affidavit from prisoner's caseworker stating that prisoner was not eligible for the Vermont work camp program. Prisoner indicated that he wanted a ruling on the merits of whether he was eligible to participate in the work camp program, but the trial court concluded that any such decision would be premature as the issue had not yet been exhausted in the administrative process.

On appeal, prisoner argues that he was entitled to a declaratory judgment on the question of whether: (1) the DOC violated his constitutional right to freedom of religious expression by denying him access to a vegetarian diet; and (2) he was entitled to participate in the work camp program. The claim based on prisoner's request for a vegetarian diet was properly dismissed as moot. AA case becomes moot when the

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parties cease to maintain a legally cognizable interest in the outcome of the case. Holton v. Dept. of Employment & Training, 2005 VT 42, &14. The mootness bar applies with equal force to declaratory judgment actions. A[T]he availability of declaratory relief turns on whether >the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.= A mere abstract or hypothetical threat is not a sufficient basis for a declaratory judgment.@ Williams v. State, 156 Vt. 42, 60 (1991) (citations omitted). The need for judicial restraint is especially important where constitutional questions are involved. There, a declaratory judgment will only issue when A >the interests of the litigants require use of this judicial authority for their protection against actual interference. A hypothetical threat is not enough.= @ Id. (citation omitted). Here, even if the trial court had issued a declaratory judgment in favor of prisoner, it would provide him with no relief (in terms of a real legal interest, as opposed to a moral or symbolic victory). There is no longer a real or immediate threat to prisoner=s rights. Accordingly, there is not a Asufficient prospect that the decision will have an impact on the parties@ justifying a declaratory judgment. Holton, 2005 VT 42, &14.

By arguing that he may return to Vermont at some point to participate in the work camp program, prisoner in effect invokes the Acapable of repetition but evading review@ exception to the mootness doctrine. The exception Ais confined to situations where: (1) the duration of the challenged action was so brief that it could not be fully litigated before it expired, and (2) there is a reasonable expectation or a demonstrated probability that the complaining party will be subject to the same action again.@ State v. Fernald, 168 Vt. 620, 621 (1998) (mem.). Because the only evidence on the issue indicated that prisoner is not eligible for the work camp program, there is no support for the notion that the deprivation will be repeated. The exception does not apply.

Finally, the question of whether prisoner was eligible for participation in the work camp program is a classically-administrative decision that must be addressed on the administrative level first before being reviewed in the courts. Wentworth v. Crawford & Co., 174 Vt. 118, 122-23 (2002) (AUnder the exhaustion doctrine one must generally pursue available administrative remedies prior to filing a civil complaint.@). Further, whether defendant is eligible for a particular correctional program is a decision firmly within the province of corrections

officials. See King v. Gorczyk, 2003 VT 34, & 11 (Supreme Court defers to decisions of DOC within expertise of DOC, including decisions on operation of correctional facilities).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice

^[1] The Department of Corrections agrees that prisoner is Acommitted to the custody and control@ of the Vermont DOC for purposes of this case.