

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

July 11, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-0859

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

EDDIE D. CANNON,

Plaintiff-Appellant,

v.

**JAMES P. MURPHY, KYLE DAVIDSON,
OFFICER II BANDEKO, COLLEEN
JAMES and SERGEANT SCHWANDT,**

Defendants-Respondents.

APPEAL from a judgment of the circuit court for Columbia County: DANIEL GEORGE, Judge. *Affirmed.*

Before Eich, C.J., Sundby and Vergeront, JJ.

PER CURIAM. Eddie Cannon appeals from a judgment dismissing his case on the grounds that, after the close of plaintiff's case, the court found that Cannon had failed to meet his burden of proof to establish a prima facie case for a First Amendment violation. For the reasons set forth below, we affirm.

BACKGROUND

On May 9, 1990, Eddie Cannon received a cross and chain which was later proven by receipt to be worth \$250. Upon receiving the jewelry, he signed a Form DOC 237 captioned "Property Receipt/Disposition." The form states in relevant portion:

I ... agree to release and save harmless any correctional institution, the Division of Corrections ... for any claim, cause of action, or loss suffered as the result of the possession and use of this property, except for the loss due to the negligence of an employee of the Division of Corrections and then only to a maximum liability of ... \$10.00

At the time Cannon received the necklace, institution policy forbade inmates from wearing "standard" necklaces. Only necklaces displaying religious or medical alert symbols were permitted.

In June, July, August and September 1990, Cannon received warnings or conduct reports for wearing the necklace with no religious symbol showing, or for wearing the cross backwards (i.e. on the back of his neck). Thereafter, Cannon was again disciplined for wearing the cross backwards. Although what happened next is somewhat unclear, it appears that Cannon took off the cross and chain, handed it to a guard and stated that he was unwilling to wear it forward. A few days later, on September 26, 1990, Cannon mailed out of the institution a package weighing six ounces, described as containing contraband associated with the conduct report written for wearing the cross backwards. The weight of the package was consistent with Cannon sending the chain out of the institution. However, although these records are suggestive, it was never proven whether the chain and cross were in the package sent out by Cannon.

In response to Cannon's request, a search for the chain and cross was instigated, but it was not found. In accordance with the limitation on Form DOC 237, Cannon was paid \$10 for the "missing" cross and chain. On

November 24, 1992, Cannon filed a 42 U.S.C. § 1983 claim alleging a violation of his First Amendment rights. He also sought to recover the full price of the chain, that being \$250. With respect to the alleged violation of his First Amendment rights, Cannon alleged that he had a sincerely-held religious belief in the two-faced Roman god, Janus, and therefore habitually wears two religious metals, one to the front and one to the back. He also claimed that no rule prevented him from so doing. He thus concluded that a "nonexistent" rule was being arbitrarily enforced against him in violation of his religious rights. The State moved for summary judgment. The court granted summary judgment dismissing several persons, and concluded that, in accord with the DOC release forms signed by Cannon, Cannon's relief on a negligence theory was limited to the \$10 he had already received. However, the court preserved for trial Cannon's claims that two guards had violated his First Amendment rights. After plaintiff put on his case, the court granted the defendants' motion to dismiss on the ground that plaintiff had failed to establish a prima facie case.

ANALYSIS

Cannon argues that his sincerely-held religious beliefs were violated by not being permitted to wear his cross on the back of his neck. Incarcerated inmates retain protections afforded by the First Amendment; however, these rights are limited by the fact of incarceration. *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987).

Cannon has advanced inconsistent beliefs to support his backwards cross-meaning. In his complaint, Cannon claims a belief in the two-faced Roman god, Janus. Therefore he claims he habitually wears two religious metals, one to the front and one to the back. However, in an affidavit submitted in lieu of testimony at his disciplinary hearing, Cannon advanced the inconsistent position that Jesus was watching his back when the cross was on the back of his neck. Finally, Cannon made a third statement that by wearing the cross backwards he feels "closer to God."

Cannon has failed to make a case. He referred to "Jesus Christ" on his prison disciplinary affidavit, to "God" on a different occasion, and to the Roman god, Janus, in his complaint, and he has never identified any belief

which could conflate these three. Mere random invocation of the names of different deities does not rise to the level of excusing a violation of a prison regulation on First Amendment grounds. *Escobar v. Landwehr*, 837 F. Supp. 284, 288 (W.D. Wis. 1993) ("although plaintiff states in his brief that he derives great spiritual value from crucifixes, he has failed to put forth any facts demonstrating that the personal possession of a crucifix [displayed in a certain manner] ... is essential to the exercise of his religion"). See also *Fiedler v. Marumsco Christian School*, 631 F.2d 1144 (4th Cir. 1980) (if belief asserted is philosophical and personal rather than religious, or is merely a matter of personal preference and not one of deep religious conviction, shared by an organized group, it will not be entitled to First Amendment protection; appropriate focus of the First Amendment is on corporate or institutional beliefs rather than on individual member's beliefs).

We conclude that Cannon's inconsistent statements regarding the religious purpose served by backwards cross-wearing failed to state a claim for violation of a "religious" belief.

We do not further consider the issue of whether Cannon has been adequately compensated for his cross. At the time he received the cross and chain, he signed a waiver. He was paid the \$10 in accordance with the waiver, and the trial court correctly limited Cannon's claim to this amount.

By the Court. – Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.