

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted December 2, 2022*

Decided January 6, 2023

Before

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 22-1045

ADAMA NJIE,
Plaintiff- Appellant,

Appeal from the United States District
Court for the Central District of Illinois.

v.

No. 1:14-cv-1079-SLD

WAYNE STEELE, et al.,
Defendants-Appellees.

Sara Darrow,
Chief Judge.

ORDER

Adama Njie, an Illinois prisoner and a Rastafarian, sued officials at Hill Correctional Center in Galesburg, Illinois, for preventing him from participating in religious services, not allowing him contact visits because of his natural hair, and denying him an Ital diet compatible with his faith. He alleged violations of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc–2000cc-5 (“the Act”)

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

and the Constitution, by way of 42 U.S.C. § 1983. Some of his claims went to trial, and a jury found that the denial of contact visits at Hill substantially burdened his religious practice and therefore violated the Act. But the district court correctly determined that, because Njie is no longer incarcerated at Hill and showed no likelihood of his return, his request for injunctive relief—the only remedy available— is moot. Thus, we affirm.

Njie’s religious observance requires that he let his hair grow freely (it naturally forms dreadlocks), follow an Ital diet, and attend regular chapel service. A policy at Hill provided that hairstyles deemed “unsearchable” might allow the concealment of contraband and posed a safety threat, so prisoners with these hairstyles could not have contact visits. Under this policy, officials at Hill limited Njie to non-contact visits during which visitors were separated from him by a glass divider. At least once, Hill officials forcibly cut Njie’s hair. The rest of the time, he had to choose between having contact visits and observing his religion by wearing his hair in dreadlocks.

Njie’s other relevant claim relates to his religious diet. In response to his request for an Ital diet, which is based on natural and unprocessed fruits, grains, and vegetables, officials offered a lacto-ovo vegetarian diet consisting of limited fruits and vegetables (rarely fresh), plus eggs and dairy products. Hill accommodated other religious diets, such as kosher and halal, precisely.

Njie sued the then-warden in her official capacity along with other staff, alleging that these practices violated the Act and, under 42 U.S.C. § 1983, the First, Eighth, and Fourteenth Amendments. The district court entered summary judgment for the defendants. We vacated that judgment in part and remanded for a trial on the claims that the “unsearchable hairstyle” provision of the visitation policy and non-Ital diet substantially burdened Njie’s religious practices. *See Njie v. Dorethy*, 766 F. App’x 387 (7th Cir. 2019). About a year later, Njie was transferred to Menard Correctional Center as part of his discipline for drug activity. The defendants again moved for summary judgment, arguing that the matter was moot because of Njie’s transfer. The district court rejected the argument because a trial might show that the challenged policies remained a threat to Njie.

At trial, where Njie was represented by recruited counsel, the jury found in favor of Njie on his claim that Hill restricted his contact visits in violation of the Act, but it returned verdicts for the defendants on the remaining claims. The trial court ordered Njie to file a motion specifying “what, if any” equitable relief he sought on his successful claim. His counseled motion requested an injunction:

1. Requiring Defendant Warden to facilitate/request Plaintiff's transfer back to Hill Correctional Center; 2. Enjoining Defendant Warden and all agents and employees ... from cutting/shaving or otherwise removing Plaintiff's dreadlocks; and 3. Enjoining Defendant Warden and all agents and employees ... from denying Plaintiff contact visits because of Plaintiff's dreadlocks.

Alternatively, Njie asked for an injunction against the warden of Menard prohibiting the cutting of his dreadlocks and the denial of contact visits based on his hairstyle.

In his pro se reply brief, Njie submitted an affidavit from an assistant warden at Menard that was filed in another inmate's case; it explained that some inmates are denied contact visits if their hair is deemed "unsearchable." The defendants provided a contradictory affidavit from the security chief at Menard stating that no such policy currently existed at the facility. The defendants also presented evidence that Njie had been transferred to Menard because a prison investigation found he conspired to smuggle narcotics into Hill. (Njie says that those charges were dismissed, but the evidence is to the contrary.) The district court denied Njie's motion for a permanent injunction, concluding that his request was moot because of his transfer. The court also stated Njie did not show that he had been denied contact visits at Menard because of his dreadlocks, nor that it was reasonably likely that he would return to Hill.

On appeal, Njie argues that the court erred in concluding that it could not enter a remedial injunction because he was no longer subject to the practice at Hill that violated his rights. We review the jurisdictional issue de novo. *Speech First, Inc. v. Killeen*, 968 F.3d 628, 645 (7th Cir. 2020). A controversy must remain live throughout all stages of litigation for a federal court to have jurisdiction. *See Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90–91 (2013). A case is moot if a court "can no longer affect the rights of litigants in the case before it." *N.J. by Jacob v. Sonnabend*, 37 F.4th 412, 421 (7th Cir. 2022) (quoting *St. John's United Church of Christ v. City of Chicago*, 502 F.3d 616, 626 (7th Cir. 2007)).

The Act permits only declaratory or injunctive relief. *See* 42 U.S.C. § 2000cc-2(f). Thus, a claim under the Act becomes moot when a realistic possibility of future violations no longer remains. *Maddox v. Love*, 655 F.3d 709, 716–17 (7th Cir. 2011). A transfer from the complained-about prison generally moots equitable and declaratory claims. *Ortiz v. Downey*, 561 F.3d 664, 668 (7th Cir. 2009) (citing *Young v. Lane*, 922 F.2d 370, 373 (7th Cir. 1991)). Further, the Prison Litigation Reform Act applies to claims under the Act. 42 U.S.C. § 2000cc-2(e). Therefore, prospective relief for unconstitutional

prison conditions must be narrow, extending no further than necessary to correct the violation. *See* 18 U.S.C. § 3626(a)(1)(A); *Rasho v. Jeffreys*, 22 F.4th 703, 711 (7th Cir. 2022).

Njie insists that there is still a remedial injunction to be had. First, he argues that he should be sent back to Hill because he presented evidence that his transfer to Menard was retaliatory. Alternatively, he wants an injunction against officials at Menard because, he asserts, a similar policy exists there and he remains under threat of having his hair forcibly cut, or his contact visits denied, because of his dreadlocks.

We agree with the district court that the relief Njie seeks would not be effective to remedy the one violation of his rights that he proved at trial: the denial of contact visits at Hill because of his dreadlocks. The only injunction that could address that claim—an order that Hill repeal, or cease enforcement of, its rule about “non-searchable” hair—would have had no effect on Njie’s rights because he is no longer at Hill. Further, the district court concluded based on the evidence that Njie did not show he was likely to be transferred back to Hill or denied contact visits there again. *See Neely-Bey Tarik-El v. Conley*, 912 F.3d 989, 1005 (7th Cir. 2019) (district court must determine likelihood of return to transferring institution). The fact that he was transferred to a higher-security facility because of his drug-related disciplinary conviction, which he unsuccessfully challenged, is significant. The record does not allow the conclusion that there is a realistic possibility of Njie’s return to Hill; therefore, injunctive relief against its warden is inappropriate. *See Ortiz*, 561 F.3d at 668.

Njie further contends that even though this suit is not against anyone at his current prison, the district court could have enjoined officials at Menard because they acted in concert with officials from Hill. *See* Fed. R. Civ. P. 65(d)(2)(C). But he has no evidence of any involvement by anyone at Menard in the transfer decision, which resulted from disciplinary action. Njie now makes assertions about violations at Menard, but they are unproven and beyond the scope of the claim he successfully litigated, which did not target any policy throughout the Illinois Department of Corrections or any violation of his rights at Menard. Relief for any unlawful restrictions on his religious practice at Menard would have to come in a separate lawsuit against those responsible or against the Department under the Act, if he alleges that it has a statewide policy.

As for Njie’s request for an injunction returning him to Hill, this is also outside the scope of relief he can obtain based on the verdict. The complaint did not contain a claim that he was transferred in retaliation for bringing this suit. Such a claim would be based on the First Amendment, not the Act. *See Holleman v. Zatecky*, 951 F.3d 873, 878

(7th Cir. 2020). He cannot skip the step of filing and proving a claim of retaliatory transfer yet obtain, as part of the remedy here, an injunction voiding the transfer. And the chance of Njie suing over the transfer and succeeding is too remote and speculative to allow us to infer a realistic possibility of his return to Hill. *See Ortiz*, 561 F.3d at 668.

Finally, Njie also requests a new trial because, he says, his recruited pro bono counsel did not present to the jury all the evidence he provided about his requests for an Ital diet and the accommodation of other types of religious diets at Hill. Njie asserts that the jury would have found in his favor if it had heard all the evidence. But his counsel presented this information through the testimony of Hill officials. A disagreement between lawyer and client over trial tactics does not signify poor performance by the lawyer. We are confident that Njie was better off with the generous assistance from the counsel who agreed to represent him in the district court than if he had tried the case on his own. (In any case, we would not vacate a jury verdict based on an argument that a civil plaintiff received ineffective assistance of counsel at trial. *Staniel v. Gramley*, 267 F.3d 575, 581 (7th Cir. 2001). Even if a lawyer were to perform deficiently—and we see *no* evidence of that in this case—ineffective assistance would not be a ground for reversal. Litigants in civil cases like this one have no constitutional right to counsel. *Diggs v. Ghosh*, 850 F.3d 905, 911 (7th Cir. 2017).)

AFFIRMED.