Contains Answer to Motion to Limit Scope as well as Answer to Petition for Review

NO. 101392-2

SUPREME COURT OF THE STATE OF WASHINGTON

JOHN THOMAS ENTLER,

Appellant,

v.

ERIC JACKSON, et al.,

Respondents.

DEPARTMENT OF CORRECTIONS' ANSWER TO PETITION FOR REVIEW AND MOTION TO LIMIT SCOPE

ROBERT W. FERGUSON
Attorney General

KATHERINE J. FABER, WSBA #49726
Assistant Attorneys General
Corrections Division
P.O. Box 40116
Olympia WA 98504-0116
(360) 586-1445
Katie.Faber@atg.wa.gov

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

I. INTRODUCTION

John Entler, an incarcerated individual, practices a religion that he asserts requires he receive privileges such as internet access, access to a private bank account, and a subsidy for his legal work, among others. When Entler failed to follow the procedures to request these privileges, he filed a civil lawsuit under the federal Religious Land Use and Institutionalized Persons Act (RLUIPA). The Court of Appeals affirmed the superior court's dismissal of Entler's RLUIPA claims on the grounds that Entler failed to show a substantial burden to his religious practice for any of his issues. This Court should deny review because the Court of Appeals decision was correct and was aligned with RLUIPA case law.

II. STATEMENT OF ISSUE

1. Whether the Court of Appeals correctly affirmed dismissal of Entler's RLUIPA claims because Entler did

not show a substantial burden to his religious practice for any of his requests for religious accommodation?

III. STATEMENT OF FACTS

In 2020, while in the Department's custody, Entler made specific requests for accommodations to his religious practice of the Messianic Essene faith, submitting his requests informally to various staff members at his prison facility and then submitting a formal Religious Request Information Sheet to the chaplain. Petition for Review (Pet.) Appendix A, at 2. These requests were:

> (1) Use of the Offender Betterment Fund to pay filing fees to relieve the substantial burdens that DOC has imposed on my sincerely held religious practices and beliefs to [preach] and [defend] the gospel from government intrusion there-upon;
>
> (2) Access to a single cell so that I can practice religious ceremonies without interruption and to maintain an area that I can keep holy and free from worldly influences;
>
> (3) Access to a personal bank account (out-side of DOC) where I can collect donations to my Non-profit church that is registered with the State of Washington and a non-profit organization;

> (4) Access to a laptop and internet to peach [sic] the gospel and post my religious articles and for non-religious entities to read and study;
>
> (5) Access to the [internet], Facebook, and email accounts, with supervision by the chaplain, so that I can carry out the functions of my non-profit church;
>
> (6) Access to a 30-40 watt (non-LED) light bulb to burn my oils during religious ceremonies and prayers in my cell;
>
> (7) Access to the Chapel and/or unit conference rooms to conduct religious services and bible studies with other inmates in the facility; and
>
> (8) A all Kosher (Glatt) diet (non-vegetarian), that I can take back to my cell and eat separately from worldly influences, while eating my sacred meals.

Pet. App. A, 2-3. In the space on the Religious Request Information Sheet for providing the name and contact information of an outside religious authority of his faith group, Entler simply wrote that he did not have to provide that information under federal law. Pet. App. A, at 3. In response, DOC staff person Dawn Taylor asked Entler to update the Sheet to include both a description of the "mandated/required practice or program of the Messianic [Essene] faith that is currently

unavailable" and "contact information for an outside religious authority to obtain additional information about the religious practices of the Messianic Essenes," to which Entler did not respond. Taylor also researched the Messianic Essene faith on the internet but could not find anything to confirm that Entler's requested accommodations were required by the faith. Without additional information, Taylor denied Entler's requests. Pet. App. A, at 3.

Entler then filed suit against numerous DOC officials for violating RLUIPA in failing to accommodate his requests. The superior court granted defendants' motion for summary judgment in full, and Entler appealed. Pet. App. A, at 4. The Court of Appeals affirmed, noting that Entler failed to show a substantial burden to his religious practice for any of his requested accommodations, including the requirement that Entler complete a Religious Request Information Sheet to submit his other requests. Pet. App. A, at 7-15. Entler now files this petition for review.

IV. REASONS WHY REVIEW SHOULD BE DENIED

Entler's petition does not satisfy any of the criteria for review in RAP 13.4(b). The Court of Appeals held that Entler's RLUIPA claims failed because Entler had failed to demonstrate any of DOC's policies or practices placed a substantial burden to his religious practices. *See* Pet. App. A, at 7-15. This decision does not conflict with any precedent, nor does it involve a significant question of constitutional law or an issue of substantial public interest. In light of this, the Court should decline review. RAP 13.4(b).

RLUIPA provides that the government may not "impose a substantial burden" on an inmate's religious exercise unless the government demonstrates that the burden is "in furtherance of a compelling governmental interest" and is "the least restrictive means of furthering that . . . interest." 42 U.S.C. § 2000cc–1(a). To state a claim under RLUIPA, a prisoner must show that: (1) he takes part in a "religious exercise," and (2) the State's actions have substantially burdened that exercise. 42 U.S.C. § 2000cc-

1(a). For the sake of argument, Respondents have not disputed that Entler's requested accommodations are religious exercises because Entler does not demonstrate a substantial burden to his religious practice. Under RLUIPA, a substantial burden is one that "impose[s] a significantly great restriction or onus upon" religious exercise. *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 1034 (9th Cir. 2004); *see also Hartmann v. Cal. Dep't of Corrections & Rehabilitation*, 707 F.3d 1114, 1124-25 (9th Cir. 2013). No such burden is present here.

Here, the Court of Appeals correctly held that requiring Entler to fill out a Religious Request Information Sheet in order to receive review of his request for additional, unique religious accommodations does not violate RLUIPA. Pet. App. A, at 7-9. The Court of Appeals also correctly recognized that Entler had not shown a substantial burden to any of his other religious practices because he either had ways to access those practices, such as requesting use of a conference room, or Entler had not demonstrated how the other practices, such as using DOC's

Offender Betterment Fund to pay his litigation fees, substantially burdened his religious practice. Pet. App. A, at 9-15.

Entler disagrees on all counts, noting again that he believes Dawn Taylor inappropriately weighed his sincerity and authenticity when asking him for more information and a contact person for the Religious Request Information Sheet. Petition, at 5-7. But the Court of Appeals directly addressed this point, distinguishing *Yellowbear v. Lampert*, 741 F.3d 48, 55 (10th Cir. 2014), noting that Taylor made no determination on the sincerity of Entler's religious exercise, and pointing out that it was Entler himself who "cut off the inquiry before it got started by refusing to fill out the forms." Pet. App. A, at 9. This was in large part because Entler refused to provide any additional description about the mandated religious practices that were unavailable to him, Pet. App. A, at 3, and not as Entler suggests based solely on his failure to identify a religious authority. *See* Petition, at 7-10.

Entler also disagrees with the Court of Appeals' analysis because, he claims, it improperly applied an "alternate means"

test from a First Amendment analysis to Entler's claims. Petition, at 10-13. Entler is again incorrect. Entler was not substantially burdened in his religious practice because, for several of his requested accommodations, he had the means to receive the accommodations he wanted. For example, he could request a single cell or use of a conference room through an established DOC process. Pet. App. A, 11-12, 13-14. Entler only calls these "alternate" means because they are alternative to his preferred method of simply receiving the accommodation on demand whenever he asks.

Throughout his Petition, Entler continues to conclude that Respondents' actions were a substantial burden on his religious practice, but he continues to do no more than assert this conclusion without further explanation or factual support. *See* Petition, at 7, 14-17. As the Court of Appeals determined, these unsupported conclusions were not enough to find that Entler had shown a substantial burden to his religious practice.

Because Entler abjectly fails to show a substantial burden to his religious practice from DOC's procedures and policies, his RLUIPA claims fail as a matter of law. The Court of Appeals recognized this, affirming dismissal of Entler's claims in a way that is consistent with existing RLUIPA case law. This Court need not disrupt this ruling, and Entler's continued disagreement with the ruling does not present a persuasive basis for this Court to accept review.

V. RESPONSE TO ENTLER'S MOTION TO LIMIT SCOPE

Entler moves for this Court, under its authority in RAP 8.3, to prohibit the Respondents from making certain legal arguments. Specifically, Entler asks this Court to prohibit the Respondents from making "compelling governmental interest" or "least restrictive means" arguments when arguing the "substantial burden" prong of RLUIPA. Motion to Limit Scope of Argument, at 1-2. This motion is improper and meritless.

Entler's motion is an improper attempt at an end-run around the limitations of RAP 18.17. Entler's motion seeks to

provide additional legal argument regarding his view of the requirements of RLUIPA beyond the page limitation for his handwritten petition for review.

Entler's motion is also meritless. Other than broadly citing to RAP 8.3, Entler provides no legal support for his proposed relief. While he clearly disagrees with certain legal arguments, the remedy is not for a court to preclude another party from making such arguments but instead, within the limits of RAP 18.17, to explain the basis for that disagreement in his own briefing.

Respondents' counsel is well aware of the requirements of the Rules of Professional Conduct to make only arguments that have a basis in law and fact. But Entler's subjective opinion about whether an argument is meritorious is not the standard for determining compliance with the Rules of Professional Conduct. Entler has established no basis for an order limiting Respondents' ability to answer Entler in this case.

For these reasons, this Court should deny Entler's motion to limit the scope of argument.

VI. CONCLUSION

The Court of Appeals decision in this case is sound and not in conflict with any case law. Entler has not shown that the criteria for accepting review under RAP 13.4(b) are satisfied. This Court should deny review and should subsequently deny Entler's motion to limit scope.

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

VII. CERTIFICATION

This document contains 1,759 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 18th day of January, 2023.

ROBERT W. FERGUSON
Attorney General

s/ Katherine J. Faber
KATHERINE J. FABER,WSBA#49726
Assistant Attorney General
Corrections Division
PO Box 40116
Olympia WA 98504-0116
(360) 586-1445
Katie.Faber@atg.wa.gov

CERTIFICATE OF SERVICE

I certify that on the date below I caused to be electronically filed the **DEPARTMENT OF CORRECTIONS' ANSWER TO PETITION FOR REVIEW AND MOTION TO LIMIT SCOPE** with the Clerk of the Court using the electronic filing system and I hereby certify that I have mailed by United States Postal Service the document to the following non electronic filing participant:

JOHN THOMAS ENTLER DOC #964471
MONROE CORRECTIONAL COMPLEX-TRU
P.O. BOX 888
MONROE WA 98272

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED this 18th day of January, 2023, at Olympia, WA.

s/ Amy Jones
AMY JONES
Legal Assistant 3
Corrections Division, OID #91025
PO Box 40116
Olympia WA 98504-0116
Amy.Jones@atg.wa.gov

CORRECTIONS DIVISION ATTORNEY GENERAL'S OFFICE

January 18, 2023 - 10:54 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	101,392-2
Appellate Court Case Title:	John Thomas Entler v. Eric Jackson, et al.
Superior Court Case Number:	20-2-02541-9

The following documents have been uploaded:

- 1013922_Answer_Reply_20230118105335SC044410_5695.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was Answer-MDR-Final.pdf

A copy of the uploaded files will be sent to:

- correader@atg.wa.gov
- vanessa.james@atg.wa.gov

Comments:

Sender Name: Amy Jones - Email: amyj@atg.wa.gov
Filing on Behalf of: Katherine Joy Faber - Email: katie.faber@atg.wa.gov (Alternate Email:)

Address:
Corrections Division
PO Box 40116
Olympia, WA, 98104-0116
Phone: (360) 586-1445

Note: The Filing Id is 20230118105335SC044410