

CONSTITUTIONAL LAW—FREE EXERCISE CLAUSE—WHETHER AN INMATE’S SINCERELY HELD RELIGIOUS BELIEF IS A COMMANDMENT OR SIMPLY AN EXPRESSION OF BELIEF IS IRRELEVANT TO A COURT’S DETERMINATION REGARDING THE REASONABLENESS OF ACTIONS TAKEN BY PRISON OFFICIALS—*DeHart v. Horn*, 227 F.3d 47 (3d Cir. 2000).

Robert P. DeHart (DeHart) was an inmate serving a life sentence at the Pennsylvania State Correctional Institute at Greene, Pennsylvania (SCI-Greene). *DeHart v. Horn*, 227 F.3d 47, 48 (3d Cir. 2000). While incarcerated, DeHart converted to Buddhism under the direction of the City of 10,000 Buddhas, a Buddhist educational center. De Hart claimed that his personal study of the First Precept of Buddhism, which forbids killing in any form, led him to the conclusion that he was religiously obligated to follow a vegetarian diet. As a result, DeHart requested that SCI-Greene provide him with a vegetarian diet consistent with his beliefs.

While the prison officials at SCI-Greene did not challenge the sincerity of DeHart’s religious beliefs, they refused to provide such a meal. The provisions for all inmate meals served at SCI-Greene were purchased in bulk and the menu was the same for all inmates. Although the prison served special therapeutic meals to inmates who required them as a matter of medical necessity, these meals consisted of smaller portions of the same foods served to the general population. DeHart claimed that his request could be accommodated by simply doubling the amount of vegetables and grains he was served and adding a soy milk supplement. The prison officials refused, reasoning that providing DeHart with a vegetarian meal would create a burden on the administration of the prison meal system and create jealousy among other inmates.

DeHart filed a written grievance with the prison administration. *Id.* at 50. This grievance was denied, and the Superintendent of SCI-Greene, James Price (Price), affirmed the prison officials’ decision. DeHart subsequently appealed this decision to the Pennsylvania Department of Corrections Central Office Review Committee, which upheld Price’s decision. In response to this denial, DeHart filed a lawsuit against Price and Martin Horn, Commissioner of the Department of Corrections,

claiming that his free exercise and equal protection rights as guaranteed by the United States Constitution had been violated.

DeHart first requested a preliminary injunction to compel the prison officials to provide him with a vegetarian meal until his claim could be heard on the merits. *Id.* at 50. After a preliminary injunction hearing, a magistrate judge recommended that injunctive relief be denied based upon a finding that vegetarianism was not a central tenet of Buddhism. *Id.* The District Court adopted this recommendation and denied the injunction, whereupon DeHart appealed to the United States Court of Appeals for the Third Circuit. *Id.* While the court of appeals upheld the denial of injunctive relief in an unreported memorandum opinion, it warned the district court not to make judgments regarding the centrality of vegetarianism to Buddhist belief. *Id.*

On remand, the parties engaged in additional discovery and filed cross-motions for summary judgment. *Id.* The magistrate judge ultimately recommended that summary judgment be granted on behalf of the prison officials. *Id.* DeHart objected to the adoption of the magistrate's report because it was again based on the finding that vegetarianism was not a central aspect of the Buddhist faith. *Id.* Despite DeHart's objections, the district court adopted that magistrate judge's recommendation and entered summary judgment for the prison officials. *Id.*

On appeal, a panel of the United States Court of Appeals for the Third Circuit reversed the district court's grant of summary judgment in an unreported opinion. *Id.* Subsequently, the en banc Third Circuit reversed the decision of the district court. *Id.* The Court of Appeals held that the District Court erred by failing to examine whether DeHart retained other means of expressing his religious beliefs, and by justifying its decision with the finding that vegetarianism was not a commandment of Buddhism. *Id.* at 54-56.

Writing for the unanimous en banc panel, Judge Stapleton commenced the court's analysis by observing that DeHart did not relinquish his constitutional rights solely by virtue of his incarceration. *Id.* at 50. Nevertheless, the judge stressed the fact that the myriad interests served by the prison system, such as the rehabilitation of inmates and security concerns, necessitated the abridgement of constitutional rights in the penal context. *Id.* at 50-51. As a result, the court noted, prisoners are afforded constitutional protection only insofar as their rights do not run afoul of "the legitimate penological objectives of the corrections system." *Id.* at 51 (quoting *Pell v. Procunier*, 417 U.S. 817, 822 (1974)).

The court proceeded to explain that the proper standard of review for prison regulations that burden the constitutional rights of inmates was set forth by the United States Supreme Court in *Turner v. Safley*. *Id.* (citing *Turner v. Safley*, 482 U.S. 78 (1987)). The *Turner* factors, Judge Stapleton noted, attempt to balance the prison officials' interest in furthering the objectives of the penal system, while at the same time protecting an inmate's constitutional prerogatives to the extent consistent with the fact of incarceration. *Id.* The court acknowledged that the ultimate indication of constitutional validity under *Turner* is a court's finding that the particular prison regulation at issue "is reasonably related to legitimate penological interests." *Id.* (quoting *Turner*, 482 U.S. at 84). Judge Stapleton maintained that in conducting such an analysis, the court must give due deference not only to the prisoner's constitutional rights, but the necessary regulatory power of prison officials. *Id.* Especially important, the judge cautioned, were the separation of powers concerns raised by inappropriate judicial analysis of the "increasingly urgent problems of prison administration" that are appropriately left to authorities of the other branches of government. *Id.* (quoting *Procunier v. Martinez*, 416 U.S. 396, 405 (1974)).

Next, the court articulated the four "reasonableness" factors announced by the Supreme Court in *Turner*. *Id.* First, the court noted that the prison regulation at issue must bear a rational relationship to some legitimate interest served by the penal system. *Id.* The court explained that this interest must be sufficiently furthered by the regulation so as to not be rendered arbitrary. *Id.* The second factor, the court stated, was the availability of alternative methods the inmate retained to exercise the burdened constitutional right. *Id.* Third, the court declared that a reviewing court must evaluate the impact of allowing the exercise of the constitutional right on the prison community as a whole. *Id.* The fourth and final factor, the court explained, was whether alternative means existed whereby prison officials could accommodate the inmate's request with a *de minimus* impact on the penological goals of the prison. *Id.*

The court indicated, however, that two prerequisites must be satisfied before conducting a *Turner* analysis. *Id.* Specifically, the court explained, an inmate's beliefs allegedly burdened by a prison regulation must be (1) genuinely held and (2) religious in nature. *Id.* These predicates were necessary, Judge Stapleton opined, in order to protect prison regulations from constant attacks based not on

inmates' constitutionally protected religious beliefs, but on mere secular preferences. *Id.* at 52. With respect to DeHart's claim, the court stated that these prerequisites were not in issue because the prison officials stipulated that DeHart's request for a vegetarian diet was a result of his genuine subjective interpretation of the First Precept of Buddhism. *Id.*

With this threshold matter resolved, the court went on to address the first *Turner* factor: the connection between the prison officials' refusal to provide DeHart with a vegetarian meal and some relevant penal interest. *Id.* The court noted that the prison officials set forth two justifications for their refusal to accommodate DeHart's religiously compelled vegetarianism: the need for a simplified prison menu plan, and the prevention of jealousy by other inmates over DeHart's perceived special treatment. *Id.* Evaluating other Third Circuit cases that addressed the validity of prison officials' interest in an efficient food system, Judge Stapleton concluded that the rationales set forth by the prison officials in the present case were legitimate penological concerns. *Id.* at 52-53 (discussing *Johnson v. Horn*, 150 F.3d 276 (3d Cir. 1998)). Specifically, the court found that the therapeutic meals already prepared by the prison kitchen complicated the inmate meal process, and obliging DeHart's request would have an incremental, albeit minor, impact on prison efficiency. *Id.* at 53. Furthermore, the court held that providing DeHart with a meal in accordance with his religious scruples could result in jealousy among the other inmates. *Id.* As a result, the court concluded, the prison officials' refusal to accommodate DeHart's request was sufficiently related to the penological interests asserted. *Id.*

Rather than concluding the analysis into the reasonableness of the prison officials' decision, the court explained, this judgment only served to meet the first requirement of *Turner*. *Id.* While the finding of a sufficient connection between the prison officials' decision and legitimate penal objectives was essential, the court explained, the reasonableness determination proposed by *Turner* also mandates that a court inquire into the impact of accommodating the inmate's request on the prison system in some other manner, as well as any alternative regulations that could serve the prison's interests while lessening the burden on the inmate's constitutional rights. *Id.*

With this caveat, the court moved on to the second *Turner* factor, the alternative means by which DeHart could exercise his Buddhist beliefs despite the prison officials' refusal to provide him with a vegetarian meal. *Id.* Judge Stapleton stated the evaluation of

the second *Turner* factor as an alternative inquiry: If the prison officials could show that DeHart had other means by which to pursue his free-exercise rights, the court should be especially deferential to the prison officials' judgment regarding the reasonableness of the restriction; alternatively, if DeHart possessed no other way of exercising his religious beliefs, this factor would weigh in favor of his claim. *Id.* at 53. The initial question, the court noted, was determining the proper definition of "alternative means of exercising the right" to free exercise of religion. *Id.* (quoting *Thornburgh v. Abbott*, 490 U.S. 401, 417 (1989)). The judge explained that on several occasions, the Supreme Court has announced that the right in question must be interpreted expansively. *Id.* (citations omitted). Therefore, the court explained, the appropriate definition of the right asserted by DeHart was his ability to engage in Buddhist practices generally, not merely his access to a vegetarian meal. *Id.* at 54.

The court found that DeHart was allowed to engage in several expressions of his religious belief, such as praying and meditating in his cell, reciting the Sutras, and corresponding with Buddhist authorities. *Id.* Furthermore, the court explained, DeHart was permitted by the prison officials to obtain items made out of canvas, instead of those made out of leather, in order to accommodate his belief that forbade him from using anything that resulted from the killing of a living thing. *Id.*

Although the court acknowledged that these facts must be taken into consideration in determining whether the prison officials' restriction was reasonable, the court decided to remand consideration of the second *Turner* factor to the district court. *Id.* The judge observed that when originally evaluating the second *Turner* factor, the district court relied on earlier decisions of the Third Circuit which made a distinction between religious "commandments" and "positive expressions of belief." *Id.* The Court found this distinction to be inappropriate. *Id.* The district court also erred in evaluating the second *Turner* factor, the court determined, by finding that DeHart's request for a vegetarian meal was unfounded because it was not mandated by the "three major traditions of Buddhist practice." *Id.* at 55. The court reasoned that while such determinations were supported in part by the Third Circuit's decision in *Johnson v. Horn*, 150 F.3d 276 (3d Cir. 1998), *Johnson* was inconsistent with several opinions of the Supreme Court and the circuit's own case law. *Id.* at 56 (citing *Johnson*, 150 F.3d at 282).

In *Johnson*, the court explained, the Third Circuit determined that the alternative means of expression inquiry mandated by the second *Turner* factor was irrelevant in those cases in which the asserted practice was a “commandment” of the religion, rather than simply an “expression of belief.” *Id.* at 55 (quoting *Johnson*, 150 F.3d at 282). Judge Stapleton, however, noted that this evaluation was inconsistent with the Supreme Court’s opinion in *O’Lone v. Estate of Shabazz*, 482 U.S. 342 (1987). *Id.* at 56. In *O’Lone*, the judge noted, when determining whether a prison’s decision to preclude a group of Muslim inmates from attending a weekly Jumu’ah worship service central to Islamic beliefs was reasonable, the Supreme Court focused on whether the inmates retained the ability to express their Muslim beliefs in any other way—irrespective of whether there was any other way to engage in Jumu’ah. *Id.* at 53 (citing *O’Lone*, 482 U.S. at 351). As a result, the court held that the commandment/positive expression distinction was incompatible with the Supreme Court’s opinion in *O’Lone*, and overruled *Johnson*’s analysis of the second *Turner* factor. *Id.* at 55.

Likewise, the court expressed reservations regarding the district court’s reasoning that DeHart’s request for a vegetarian meal was entitled to less constitutional protection because it was not orthodox compared to the traditional doctrines of Buddhist teaching. *Id.* Judge Stapleton noted that it was inconsistent with a long line of Supreme Court decisions, most notably *Employment Division v. Smith*, 494 U.S. 872 (1990), for a judge to inquire into the “centrality” of a particular religious practice. *Id.* at 56. Although the *Smith* decision was badly fractured, the court noted, all of the concurring and dissenting opinions approved of the plurality’s assertion that “it is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants’ interpretations of those creeds.” *Id.* (quoting *Employment Division*, 494 U.S. at 886-87 (internal citations omitted)). While noting that the record evidence indicated that DeHart retained alternative means of exercising his religious beliefs, the court nonetheless indicated that it would require the district court to reevaluate the second *Turner* factor. *Id.* at 57.

The court then turned its attention to the district court’s analysis of the third and fourth factors of the *Tuner* test. *Id.* With respect to the third *Turner* factor—the impact accommodating DeHart’s request would have on inmates, guards, and other

resources—the court disapproved of the district court’s holding. *Id.* The district court had held that because there was no uncontroverted evidence regarding the impact of DeHart’s request on the prison community, the third factor was neutral. *Id.* Judge Stapleton, however, held this conflict had to be resolved with findings of fact before the district court could even undertake the weighing analysis of *Turner*. *Id.* Particularly troubling, the court noted, was the fact that DeHart claimed that prison officials were able to accommodate the dietary requests of Jewish inmates, while not affording the same accommodation to DeHart. *Id.* While the court noted that some reasoned distinction may exist between the accommodation of Jewish inmates and DeHart’s request for a vegetarian meal, the fact that one was not asserted in the record precluded the district court from properly evaluating the third *Turner* factor. *Id.* at 59. Likewise, the court explained that the district court’s evaluation of the fourth factor—whether *de minimis* alternatives existed to accommodate DeHart’s request for a vegetarian diet—suffered from the same infirmities. *Id.*

Finally, the court reversed summary judgment on behalf of the prison officials based upon a finding that the district court improperly evaluated the overall balancing test required by *Turner*. *Id.* As the court explained, the district court based summary judgment on the fact that the first two *Turner* factors weighed in favor of the prison officials, while the last two factors were neutral. *Id.* Putting aside the district court’s errors in evaluating the *Turner* factors individually, the court found that the *Turner* test “does not call for placing each factor in one of two columns and tallying a numerical result.” *Id.* The *Turner* standard, the court elucidated, is to assess the overall reasonableness of the prison officials’ denial of DeHart’s request. *Id.* In the present case, the court explained, the prison officials’ asserted interests were efficiency and prevention of inmate jealousy. *Id.* The court found, however, that these interests were undercut by the prison’s existing policy of serving inmates therapeutic meals separately with no apparent effect on inmate jealousy, and the fact that DeHart’s requested meal would only force the prison officials to obtain a relatively inexpensive soy-milk supplement. *Id.* In light of these facts, the court reversed summary judgment and remanded the case to the district court for a more in-depth analysis of the *Turner* factors. *Id.* at 60.

After concluding the analysis of DeHart’s free exercise claim, the court turned to consideration of his equal protection claim. *Id.* at 61. The court explained that DeHart’s equal protection claim relied

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on the fact that he was denied the right to have a vegetarian meal in accordance with his Buddhist beliefs, while the Jewish inmates in *Johnson* were given a kosher meal in accordance with their faith. *Id.* Noting that the four *Turner* factors were applicable to this claim as well, the court explained that DeHart's equal protection claim must fail if the prison officials' decision to deny him a vegetarian meal was "reasonably related to legitimate penological interests." *Id.* (quoting *Clark v. Groose*, 36 F.3d 770, 773 (8th Cir. 1994)). The court, however, explained that the justification for such a distinction had not been explained by the prison officials or the district court below. *Id.* As a result, the court remanded consideration of this issue to the district court as well. *Id.*

In *DeHart*, the United States Court of Appeals for the Third Circuit reconciled its free exercise jurisprudence with the holdings of the Supreme Court. Although this decision may have the unintended effect of lessening the free exercise protection afforded to inmates because those activities which are religious "commandments" are no longer entitled to heightened protection, the commandment/expression of belief distinction is not an appropriate forum for judicial decision making. Given today's religiously pluralistic society, the judiciary has reasonably declined to serve as a moderator of religious orthodoxy, limiting its analysis to the sincerity of an inmate claiming a free exercise violation. Although the *Turner* standard may narrow the constitutional protections accorded to religious freedoms the, the Third Circuit wisely refused to dismiss DeHart's claim based upon a judicial interpretation of Buddhist ecclesiastical concerns.

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