1986 WL 4045
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United States District Court, S.D. Iowa, Central Division.

Carl Eric OLSEN and the Ethiopian Zion Coptic Church, Plaintiffs,

v.

STATE OF IOWA, Defendant.

Civ. No. 83–301–E
|
March 19, 1986.

Attorneys and Law Firms

James R. Cook, Des Moines, Iowa, for plaintiffs.

Joseph P. Weeg, Asst. Atty. Gen., Des Moines, Iowa, for defendant.

ORDER

DONALD E. O'BRIEN, District Judge.

***1** This matter is before the Court on defendant's resisted motion for summary judgment. A hearing was held on November 25, 1985. After careful consideratioon of the parties' briefs and arguments, this Court grants defendant's motion.

Plaintiff is a priest of the Ethiopian Zion Coptic Church. This religion uses marijuana as an integral part of its religious doctrine. *United States v. Rush,* 738 F.2d 497, 512 (1st Cir.1984), *cert. denied,* —— U.S. ——, 105 S.Ct. 1355 (1984). In 1978, plaintiff was convicted of possession of a controlled substance (marijuana) with intent to deliver in violation of Iowa Code Section 204.401(1) (1977). The Iowa Supreme Court reversed plaintiff's conviction on appeal. *State v. Olsen,* 293 N.W.2d 216 (Iowa), *cert. denied,* 449 U.S. 993 (1980). Olsen was retried, convicted, and appealed. The Iowa Supreme Court affirmed, finding that plaintiff's right to equal protection was not violated by the Iowa laws on marijuana usage. No. 171–69079 (July 18, 1984) at 3–4 (unreported opinion attached). On May 9, 1985, plaintiff filed a Petition for Declaratory Judgment, claiming that the Iowa criminal statutes regarding controlled substances discriminated against his religious beliefs, thereby denying him equal protection of the laws.

The Iowa Supreme Court has already upheld the constitutionality of Iowa Code Section 204.401(1) against plaintiff's equal protection attack. *State v. Olsen, supra,* at 3–4. The federal declaratory judgment statute, 28 U.S.C. §§ 2201–2202 does not give this Court the power to review a state court decision. *Travelers Insurance Co. v. Davis,* 490 F.2d 536, 644 (3rd Cir.1974). Plaintiff cites *Peyote Way Church of God, Inc. v. Smith,* 742 F.2d 193 (5th Cir.1984), for the proposition that this Court can enter a declaratory judgment on the constitutionality of the Iowa controlled substance laws. However, the *Peyote Way* decision is distinguishable from the instant case because in the former, there was no prior state court decision involving the constitutionality of the criminal statute in the religious context.

Assuming for purposes of discussion that *Peyote Way* applies, the equal protection issue has already been decided adverse to plaintiff by another federal circuit. In *United States v. Rush,* 738 F.2d 497 (1st Cir.1984), *cert. denied,* —— U.S. ——, 105 S.Ct. 1355 (1984), the Court held that, "the Ethiopian Zion Coptic Church cannot be deemed similarly situated to the Native American Church for equal protection purposes." *Id.* at 513. In *Rush,* the Ethiopian Zion Coptic Church claimed it should be afforded a religious exemption from the marijuana laws on the same terms as the peyote exemption granted to the Native American Church. *Id.* The Court reasoned that the Native American Church's exemption was a product of congressional findings and legislative history underlying the American Indian Religios Freedom Act, and that the Ethiopian Zion Coptic Church had not received similar congressional dispensation for marijuana use. *Id.*

***2** While this Court is not bound by another circuit's decision, the Eighth Circuit has recently spoken of the need for deference to other circuits:

> [a]lthough we are not bound by another circuit's decision, we adhere to the policy that a sister circuit's reasoned decision deserves great weight and precedential value. As an appellate court, we strive to maintain uniformity in the law among our circuits, wherever reasoned analysis will allow ... [t]his duty applies to the district courts in this circuit.

Keasler v. United States, 766 F.2d 1227, 1233 (8th Cir.1985), (footnote and citations omitted). Thus, even were this Court to

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consider granting plaintiff a declaratory judgment, such relief is foreclosed by the *Rush* decision.

Plaintiff's equal protection issue is also barred by collateral estoppel, or issue preclusion. "Under collateral estoppel, once a court has decided an issue of law or fact necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." *Montana v. United States,* 440 U.S. 147, 153 (1979). The Supreme Court faced a similar problem in *Allen v. McCurry,* 449 U.S. 90 (1980). In that case, plaintiff brought a § 1983 action against the officers who entered his home seizing evidence used against him in his state criminal trial. *Id.* at 91. The Court noted that 28 U.S.C. § 1738 requires federal courts to give preclusive effect to state court judgments whenever the courts of the state where the judgments were issued would do so. *Id.* at 96.

Justice Stewart's majority opinion held that as the state court had already decided the search and seizure issue, and because petitioner did not assert that the state court failed to provide him with a full and fair opportunity to litigate the issue, collateral estoppel barred relitigation in federal court on the same issue in a § 1983 action. *Id.* at 101. Justice Stewart wrote, "the Court's view of § 1983 in *Monroe* lends no strength to any argument that Congress intended to allow relitigation of federal issues decided after a full and fair hearing in a state court simply because the state court's decision may have been erroneous." *Id.*

Thus, the only issue remaining is whether the Iowa Supreme Court's order can be given collateral estoppel effect under the test announced in *In re Piper Aircraft Litigation,* 551 F.2d 213 (8th Cir.1977). Four elements must be satisfied under the collateral estoppel test:

> (1) [T]he issue sought to be precluded must be the same as that involved in the prior action; (2) that issue must have been actually litigated; (3) it must have been determined by a valid and final judgment; and (4) the determination must have been essential to the prior judgment.

Id. at 218–219.

Applying the above elements to the facts of the instant case, this Court concludes that collateral estoppel effect must be given to the Iowa Supreme Court's judgment. Plaintiff here challenges the statute on equal protection grounds, which is the same issue decided by the Iowa Supreme Court. (see attached unreported opinion at 3–4). The issue was also actually litigated at the state level. The Iowa Supreme Court based its' decision on testimony regarding the Church's indiscriminate use of marijuana, indicating that this issue was fully litigated. *Id.* at 4. The equal protection issue was also determined in a judgment by the Iowa Supreme Court, and plaintiff has failed to produce any reason why the decision should not be considered valid and final. Finally, the determination of the equal protection issue was essential to the prior judgment, for had the Iowa Supreme Court ruled otherwise, plaintiff's conviction would have been reversed.

***3** The above analysis demonstrates that collateral estoppel applies to bar litigation of the equal protection issue before this Court. These same principles also apply to plaintiff's first amendment issue, as the Iowa Supreme Court decided that aspect of plaintiff's claim in *State v. Olsen,* 315 N.W.2d 1, 7–9 (Iowa 1982). In that case, the court held that "[a] compelling state interest sufficient to override Olsen's free exercise clause argument is demonstrated in this case." *Id.* at 9. Therefore, as the issues plaintiff seeks to litigate before this Court are barred by collateral estoppel, defendant's motion for summary judgment must be granted, and defendant's case dismissed.

IT IS THEREFORE ORDERED that defendant's motion for summary judgment is hereby granted.

IT IS FURTHER ORDERED that plaintiff's petition for a declaratory judgment is hereby denied, and the case dismissed.

EXHIBIT "A"

IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Appellee,

vs.

CARL ERIC OLSEN, Appellant.

Filed July 18, 1984

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Appeal from the Iowa District Court for Muscatine County, R.K. Stohr, Judge.

Defendant appeals from a judgment convicting him of unlawful possession of marijuana with intent to deliver, a violation of Iowa Code section 204.401(1). AFFIRMED.

Carl Eric Olsen, Miami Beach, Florida, pro se. James R. Cook of Cook & Waters, Des Moines, on the brief.

Thomas J. Miller, Attorney General, Joseph P. Weeg, Assistant Attorney General, and Stephen J. Petersen, County Attorney, for appellee.

Considered by Reynoldson, C.J., and Uhlenhopp, Larson, Schultz, and Wolle, JJ.

PER CURIAM.

Defendant, Carl Eric Olsen, appeals from a judgment convicting him of unlawful possession of marijuana with intent to deliver, a violation of Iowa Code section 204.401(1). This case was before us in *State v. Olsen,* 293 N.W.2d 216 (Iowa), *cert. denied,* 449 U.S. 993, 101 S.Ct. 530, 66 L.Ed.2d 290 (1980), in which we reversed and remanded when a State's witness was permitted to testify beyond the scope of the minutes of testimony. Following his conviction on a second trial, defendant again appeals and we affirm.

Olsen admits that when stopped by the West Liberty police in May of 1978, he was transporting 129 pounds of marijuana and $10,915 in cash. His sole defense is that his possession and use of the marijuana are protected by the first amendment's guarantee of religious freedom.

Olsen is a member and priest of the Ethiopian Zion Coptic Church. Testimony at his trial revealed the bona fide nature of this religious organization and the sacramental use of marijuana within it. Testimony also revealed church members use marijuana continuously and publicly, commencing at an early age. Olsen admitted to smoking marijuana while driving and to using the drug a few hours before testifying in his second trial. Nonetheless, he asks us on this appeal to afford his religious use of marijuana unlimited constitutional protection.

I. This court dealt at length with Olsen's first amendment claim in *State v. Olsen,* 315 N.W.2d 1, 7–9 (Iowa 1982), a case involving this defendant but based on a different automobile stop and arrest. We find no reason to retreat from our holding there that "[a] compelling state interest sufficient to override Olsen's free exercise clause argument is demonstrated in this case." In fact, since our last *Olsen* decision, we have been joined in our analysis by yet another court, see *Whyte v. United States,* 471 A.2d 1018 (D.C.1984).

***4** Olsen now contends we must make an independent finding of a compelling state interest rather than defer to the legislature's decision to regulate marijuana. The cases do not support Olsen's assertion. *See Leary v. United States,* 383 F.2d 851, 860–61 (5th Cir.1967), *rev'd on other grounds,* 395 U.S. 6, 89 S.Ct. 1532, 23 L.Ed.2d 57 (1969); *Whyte,* 471 A.2d at 1021; *State v. Rocheleau,* 142 Vt. 61, 68, 451 A.2d 1144, 1148 (1982).

II. Defendant also raises an equal protection challenge, based on the legislative exemption granted the peyote ceremonies of the Native American Church. *See* Iowa Code § 204.204(8) (1983). This statutory exemption may be derived from the California Supreme Court's decision in *People v. Woody,* 61 Cal.2d 716, 394 P.2d 813, 40 Cal.Rptr. 69 (1964). The *Woody* court noted in granting the prosecution exemption that peyote was used only in a desert enclosure and only during a special Saturday sundown to Sunday sunrise ceremony. The participants were fed breakfast at the close of the ceremony and were kept isolated from the general population until the drug's effects had dissipated. Defendant can point to no such safeguards in the Coptic Church's indiscriminate use of marijuana; the drug is smoked publicly and continuously and made available to church members regardless of age or occupation. These significant distinctions render meritless defendant's equal protection argument.

We affirm the judgment of the district court.

AFFIRMED.

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