Beards Behind Bars

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My choice of topic for today's post may or may not have been influenced by the fact that I'm growing a beard. Reviews are mixed, ranging from nonspecific acknowledgment ("You have a beard!") to good-natured derision ("Did you lose a bet?"). Jeff says I'm a pair of skinny jeans away from becoming a hipster. Kidding aside, today's post is about the serious subject of whether prison officials must permit an inmate to grow a beard in accordance with his sincere religious beliefs. The Supreme Court held this week in *Holt v. Hobbs* that they must.

In *Holt*, an Arkansas inmate challenged that state's Department of Correction grooming policy banning most facial hair. The inmate, a devout Muslim, wished to grow a ½-inch beard in accordance with his religious faith. Prison officials denied his request. The only exception to the policy was a medical exemption for inmates with dermatological problems, who were allowed to grow a ¼-inch beard.

Holt challenged the grooming policy under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq*. RLUIPA "prohibits a state or local government from taking any action that substantially burdens the religious exercise of an institutionalized person unless the government demonstrates that the action constitutes the least restrictive means of furthering a compelling government interest." Slip op. at 1. The law thus applies a *statutory* form of strict scrutiny to governmental limits on inmates' religious exercise.

After losses in federal district court and the Court of Appeals for the Eighth Circuit, Holt obtained a resounding win in the Supreme Court. The Court unanimously held that the DOC policy violated RLUIPA.

By forcing Holt to choose between shaving his beard or facing serious disciplinary action, the DOC policy "substantially burdened" his religious exercise. Under RLUIPA, such a burden would be allowed only if it was (1) in furtherance of a compelling government interest, and (2) was the least restrictive way of furthering that interest.

The Court allowed that the prison had a compelling interest in preventing the flow of contraband into its facilities, but found it "hard to take seriously" the argument that the interest would be seriously compromised by an inmate's ½-inch beard. Even if officials could show that the no-beard policy kept contraband out, they would not be able to clear the second hurdle of showing that the policy was the least restrictive way of doing so. Couldn't they further the same interest by the less restrictive alternative of having bearded inmates run a comb through their facial hair? The Court was slightly less skeptical but ultimately unpersuaded by DOC's second argument that the policy helped prevent inmates from disguising themselves or quickly changing their appearance by shaving. With DOC unable to meet its burden, the Court concluded that the policy violated RLUIPA and remanded for further proceedings.

Holt perhaps doesn't change things much here in North Carolina. The Fourth Circuit already reached a similar conclusion regarding the Virginia DOC's facial hair policy in Couch v. Jabe, 679 F.3d 197 (4th Cir. 2012) (holding that VDOC's refusal to allow a Sunni Muslim inmate to grow a 1/8-inch beard violated RLUIPA when prison officials did not establish that the policy was the least restrictive means of furthering a compelling government interest), albeit through a slightly more deferential approach.

Nevertheless, the case serves as a reminder that, in light of RLUIPA, religious issues are different from other

limitations on inmates' constitutional rights. The baseline constitutional analysis for most any limit on an inmate's rights is the so-called *Turner* test, balancing the inmate's right against the facility's "legitimate penological interests" in preserving security, good order, and discipline. Turner v. Safely, 482 U.S. 78 (1987). The test requires only a "valid, rational connection" between the restriction at issue and the facility's penological interests, and courts generally apply it with broad deference to the professional judgment of correctional officials. Courts obviously reach different conclusions under it, but one thing is clear: it is far less demanding than the statutory scrutiny required for religious burdens under RLUIPA.

North Carolina's prison system does not set a specific limit on the length of an inmate's beard by policy. The only hair-related requirement—for both facial and cranial hair—is that it be kept clean, § E.2107, neatly cut, and properly groomed, § B.0301(e). Jails around the state may take a different approach, but they should note that RLUIPA applies to them if they receive any federal assistance.

Though *Holt* was about facial hair, the Court's approach in the case will surely extend to other forms of religious exercise including hair length, head coverings, and religious diets, just to name a few. RLUIPA itself defines "religious exercise" broadly to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A). The overarching tone of the unanimous Court in *Holt*—moving away from the "unquestioning deference" applied by the lower courts in the case, slip op. at 10—strikes me as a significant development in the litigation of inmates' religious rights.