

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
THIRD DEPARTMENT**

Matter of Arriaga v. Smith

70 A.D.3d 1160 (N.Y. App. Div. 3d Dep't 2010) · Decided February 11, 2010

SUMMARY

The court reviewed a CPLR article 78 proceeding challenging a prison disciplinary determination finding the petitioner guilty of theft of state property and smuggling. It held that the misbehavior report and hearing testimony constituted substantial evidence, rejected the petitioner's notice, credibility, and hearing-officer-bias claims, and confirmed the determination.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Peters, J.P.; Rose, J.; Lahtinen, J.; Kavanagh, J.; McCarthy, J.
JURISDICTION	New York
DECIDED	February 11, 2010
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner commenced a CPLR article 78 proceeding seeking review of a prison disciplinary determination. The proceeding was transferred to the Appellate Division, which reviewed the determination and confirmed it, dismissing the petition.
STANDARD OF REVIEW	Whether the administrative determination is supported by substantial evidence and whether the proceeding was conducted consistently with applicable procedural and due-process requirements.
PRECEDENTIAL VALUE	Published Appellate Division decision
PARTIES	Arriaga v. Smith, Superintendent of Shawangunk Correctional Facility

TOPICS

agency adjudication judicial review of agency action standard of review evidence appellate procedure

PRACTICE AREAS

administrative law prison disciplinary proceedings appellate procedure evidence

QUESTIONS PRESENTED

1. Whether the misbehavior report and the author's hearing testimony constituted substantial evidence supporting the disciplinary determination.
2. Whether alleged errors in the misbehavior report concerning the location of the search and the date of service deprived petitioner of adequate notice or otherwise prejudiced his defense.
3. Whether petitioner's claim that the bag did not belong to him required reversal rather than resolution as a credibility issue by the hearing officer.
4. Whether the hearing officer was biased or the determination resulted from bias.

HOLDINGS

1. The misbehavior report, together with the hearing testimony of its author, provided substantial evidence supporting petitioner's guilt.
2. The misbehavior report adequately apprised petitioner of the charges, and alleged errors concerning the search location or date of service did not warrant annulment because petitioner demonstrated no prejudice in preparing his defense.
3. Petitioner's contention that the bag containing the food did not belong to him presented a credibility issue for the hearing officer to resolve.
4. The record did not support petitioner's claim that the hearing officer was biased or that the determination resulted from bias.

FACTUAL BACKGROUND

A misbehavior report charged petitioner with theft of state property and smuggling after a search of his personal bag as he left the correctional facility kitchen uncovered over two pounds of sliced turkey and nine slices of bread. At a tier II disciplinary hearing, petitioner was found guilty of both charges; he disputed ownership of the bag and challenged the report, the evidentiary basis, and the hearing officer's impartiality.

PROCEDURAL HISTORY

After a search of petitioner's personal bag uncovered more than two pounds of sliced turkey and nine slices of bread, petitioner was charged with theft of state property and smuggling. Following a tier II disciplinary hearing, petitioner was found guilty of both charges, and the determination was affirmed on administrative appeal. The article 78 proceeding was transferred from Supreme Court, Ulster County, to the Appellate Division.

DISPOSITION

dismissed

CASES CITED

- Matter of Roye v. Goord, 34 A.D.3d 1134 (N.Y. App. Div. 2006)

- Matter of Linares v. Fischer, 59 A.D.3d 761 (N.Y. App. Div. 2009), leave to appeal denied, 12 N.Y.3d 709 (2009)
- Matter of Cruz v. Fischer, 57 A.D.3d 1055 (N.Y. App. Div. 2008)
- Matter of Warren v. Fischer, 63 A.D.3d 1466, 1467 (N.Y. App. Div. 2009)

OPINION

PER CURIAM.

Proceeding pursuant to CPLR article 78 (transferred to this Court by order of the Supreme Court, entered in Ulster County) to review a determination of respondent Superintendent of Shawangunk Correctional Facility which found petitioner guilty of violating certain prison disciplinary rules. Petitioner was charged in a misbehavior report with theft of state property and smuggling after a search of his personal bag as he left the facility kitchen uncovered over two pounds of sliced turkey and nine slices of bread.

Following a tier II disciplinary hearing, petitioner was found guilty of both charges. The determination was affirmed on administrative appeal and this CPLR article 78 proceeding ensued. We confirm. To the extent that petitioner challenges the evidentiary basis of the determination, we conclude that the misbehavior report, together with the hearing testimony of its author, provide substantial evidence supporting the determination of guilt (see Matter of Royce v Goord, 34 AD3d 1134 [2006]).

Further, the misbehavior report was sufficient to apprise petitioner of the charges against him and he has demonstrated no prejudice in preparing a defense from any alleged errors in the report regarding the location of the search or the date of service (see Matter of Linares v Fischer, 59 AD3d 761 [2009], lv denied 12 NY3d 709 [2009]). Petitioner's contention that the bag containing the food did not belong to him presented a credibility issue for the Hearing Officer to resolve (see Matter of Cruz v Fischer, 57 AD3d 1055 [2008]).

Finally, we find no support in the record for petitioner's claim that the Hearing Officer was biased or that the determination flowed from any bias (see Matter of Warren v Fischer, 63 AD3d 1466, 1467 [2009]). We have examined petitioner's remaining contentions and, to the extent preserved, find them to be unavailing. *1161Peters, J.P., Rose, Lahtinen, Kavanagh and McCarthy, JJ., concur.

Adjudged that the determination is confirmed, without costs, and petition dismissed.