

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

Gustus v. Fischer

64 A.D.3d 1034 (N.Y. App. Div. 2009) · Decided July 16, 2009

SUMMARY

The New York Appellate Division, Third Department held that a second prison disciplinary proceeding was barred by res judicata because both misbehavior reports arose from the same altercation and the necessary information was available before the first hearing. The court reversed, annulled the determination on the second report, and directed expungement of references to it from the petitioner’s institutional record.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Per Curiam; Peters, J.E.; Rose, J.; Kane, J.; Stein, J.; Garry, J.
JURISDICTION	New York
DECIDED	July 16, 2009
DISPOSITION	reversed
PROCEDURAL POSTURE	Petitioner appealed from dismissal of a CPLR article 78 proceeding challenging a prison disciplinary determination.
PRECEDENTIAL VALUE	published
PARTIES	Gustus v. Fischer

TOPICS

- res judicata
- agency adjudication
- judicial review of agency action
- administrative law
- civil procedure

PRACTICE AREAS

- administrative law
- civil procedure
- prison disciplinary proceedings

QUESTIONS PRESENTED

1. Whether a second prison disciplinary proceeding based on the same altercation was barred by res judicata when the information supporting the second charges was available before the first disciplinary

hearing commenced.

2. Whether the second disciplinary determination should be annulled and references to it expunged from petitioner's institutional record.

HOLDINGS

1. Under New York's transactional analysis approach, res judicata barred the second disciplinary hearing because both misbehavior reports concerned the same April 17, 2007 incident and all information necessary to support the second charges was available before the first hearing began.
2. The second disciplinary determination was annulled, and respondent was directed to expunge all references to it from petitioner's institutional record.

KEY QUOTATIONS

“Under the transactional analysis approach to this doctrine, “ ‘once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy’ ”” (64 A.D.3d at 1035)

“Because the two misbehavior reports charged violations concerning one incident and all of the information necessary to support the charges was available before commencement of the first hearing, the hearing on the second misbehavior report was barred by the doctrine of res judicata” (64 A.D.3d at 1035)

FACTUAL BACKGROUND

On April 17, 2007, petitioner was involved in a physical altercation with another inmate and then left a location where a correction officer had directed him to remain. A first misbehavior report charged fighting and refusing a direct order, while a second report, based on an investigation of the same incident, charged assaulting an inmate and engaging in violent conduct. The second hearing began approximately one hour after the first hearing ended, and the information supporting the second report was available before the first hearing began.

PROCEDURAL HISTORY

Petitioner was found guilty in a tier III disciplinary hearing of refusing a direct order; the fighting charge from that report was later dismissed on administrative appeal. In a separate proceeding concerning a second misbehavior report arising from the same altercation, petitioner was found guilty of assaulting an inmate and engaging in violent conduct. Supreme Court dismissed petitioner's CPLR article 78 challenge asserting that the second determination was barred by res judicata. The Appellate Division reversed, granted the petition, annulled the second determination, and directed expungement of references to it from petitioner's institutional record.

DISPOSITION

reversed

REMAND INSTRUCTIONS

No remand was ordered; the petition was granted, the second determination was annulled, and respondent was directed to expunge all references to it from petitioner's institutional record.

CASES CITED

- Matter of Burgess v. Goord, 285 A.D.2d 753 (2001)
- Matter of Josey v. Goord, 9 N.Y.3d 386 (2007)
- O'Brien v. City of Syracuse, 54 N.Y.2d 353 (1981)
- Matter of Thomas v. Selsky, 23 A.D.3d 868 (2005)
- Matter of Griffith v. Selsky, 32 A.D.3d 595 (2006)

OPINION

PER CURIAM.

Appeal from a judgment of the Supreme Court (Sackett, J.), entered May 23, 2008 in Albany County, which dismissed petitioner's application, in a proceeding pursuant to CELR article 78, to review a determination of respondent finding petitioner guilty of violating certain prison disciplinary rules.

On April 17, 2007, petitioner was involved in a physical altercation with another inmate. After a correction officer intervened, he directed petitioner to remain in a specific location, but petitioner slipped away into the crowd.

As a result, petitioner was charged in a misbehavior report with fighting and refusing a direct order. He was found guilty of both charges following a tier III disciplinary hearing. Upon administrative appeal, the charge of fighting was dismissed, but the charge of refusing a direct order was sustained. A few days after the incident in question, and as the result of an investigation of the same incident during which confidential information was received, petitioner was charged in a second misbehavior report with assaulting an inmate and engaging in violent conduct.

Following a tier III disciplinary hearing, he was found guilty of these charges and the determination was affirmed on administrative appeal with a modified penalty. Petitioner then commenced this CPLR article 78 proceeding asserting that the second determination is barred by the doctrine of res judicata. Following joinder of issue, Supreme Court dismissed the petition.

This appeal ensued. We reverse. The doctrine of res judicata "bars a cause of action that was raised and adjudicated, or which could have been raised and adjudicated, in a prior action or proceeding" (Matter of Burgess v Goord, 285 AD2d 753, 755 [2001]).

Under the transactional analysis approach to this doctrine, " 'once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred,

even if based upon different theories or if seeking a different remedy' ” (Matter of Josey v Goord, 9 NY3d 386, 389-390 [2007], quoting O’Brien v City of Syracuse, 54 NY2d 353, 357 [1981]).

Here, both misbehavior reports charged petitioner with rule violations related to his conduct in the April 17, 2007 altercation. Although additional information became available through an investigation after the first misbehavior report was filed, which led to the filing of the second misbehavior report, all of that information was available before the first hearing began.

In fact, the hearing on the second report commenced approximately one hour after completion of the hearing on the first report. This was not a situation where two reports charged different rule violations for separate but somehow related conduct, permitting separate hearings and determinations (see Matter of Thomas v Selsky, 23 AD3d 868, 869 [2005]; cf. Matter of Griffith v Selsky, 32 AD3d 595, 596 [2006]).

Because the two misbehavior reports charged violations concerning one incident and all of the information necessary to support the charges was available before commencement of the first hearing, the hearing on the second misbehavior report was barred by the doctrine of res judicata (see Matter of Burgess v Goord, 285 AD2d at 754-755). Peters, J.E, Rose, Kane, Stein and Garry, JJ., concur.

Ordered that the judgment is reversed, on the law, without costs, petition granted, determination on the second misbehavior report annulled and respondent is directed to expunge all references thereto from petitioner’s institutional record.