

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

Matter of Dickerson v. Annucci

122 A.D.3d 1046 (N.Y. App. Div. 2014) · Decided November 13, 2014

SUMMARY

The court confirmed a determination finding the petitioner guilty of prison disciplinary violations involving smuggling, contraband, drugs, and visitation procedures. It held that substantial evidence supported the determination, the rehearing was timely, the handling of inmate-witness testimony was proper, and the chain of custody was established.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                  |
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| COURT                 | Supreme Court of the State of New York, Appellate Division, Third Department                                                                                                                                                                                     |
| WRITING FOR THE COURT | Per Curiam; Peters, P.J.; McCarthy, J.; Rose, J.; Egan Jr., J.; Lynch, J.                                                                                                                                                                                        |
| JURISDICTION          | New York                                                                                                                                                                                                                                                         |
| DECIDED               | November 13, 2014                                                                                                                                                                                                                                                |
| DISPOSITION           | dismissed                                                                                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | CPLR article 78 proceeding transferred to the Appellate Division to review a prison disciplinary determination finding petitioner guilty of smuggling, possession of contraband, possession of drugs, and failure to comply with facility visitation procedures. |
| STANDARD OF REVIEW    | Whether the administrative determination is supported by substantial evidence and is otherwise lawful.                                                                                                                                                           |
| PRECEDENTIAL VALUE    | Published New York Appellate Division decision                                                                                                                                                                                                                   |
| PARTIES               | Dickerson v. Annucci                                                                                                                                                                                                                                             |

TOPICS

- judicial review of agency action
- administrative law
- evidence
- appellate procedure
- hearsay

PRACTICE AREAS

- administrative law
- prison disciplinary proceedings
- appellate procedure
- evidence

## QUESTIONS PRESENTED

1. Whether substantial evidence supported the determination finding petitioner guilty of the charged prison disciplinary violations.
2. Whether the rehearing was commenced and completed within the applicable time limits.
3. Whether the Hearing Officer violated petitioner's rights by taking an inmate witness's testimony outside petitioner's presence.
4. Whether the record established an unbroken chain of custody for the contraband.

## HOLDINGS

1. The determination finding petitioner guilty of the charged violations was supported by substantial evidence.
2. The rehearing was commenced and completed in a timely manner.
3. The Hearing Officer did not err by taking the inmate witness's testimony outside petitioner's presence because petitioner was allowed to submit questions and listen to a recording of the testimony.
4. The record established an unbroken chain of custody for the contraband.

## KEY QUOTATIONS

*“The misbehavior report, the hearing testimony, the transcript of the telephone conversation between petitioner and the acquaintance and the positive drug test results provide substantial evidence supporting the determination of guilt” (122 A.D.3d at 1046)*

*“Finally, the record establishes that an unbroken chain of custody of the contraband was maintained” (122 A.D.3d at 1047)*

## FACTUAL BACKGROUND

An investigation revealed that petitioner solicited an acquaintance to bring drugs into the correctional facility. Petitioner was charged with smuggling, possession of contraband, possession of drugs, and failure to comply with facility visitation procedures. At the rehearing, the record included a misbehavior report, hearing testimony, a transcript of the relevant telephone conversation, positive drug-test results, testimony taken outside petitioner's presence, and evidence concerning the chain of custody of the contraband.

## PROCEDURAL HISTORY

Petitioner was initially found guilty after a tier III disciplinary hearing, but the Appellate Division annulled that determination and remitted for a rehearing. After the rehearing, petitioner was again found guilty, the determination was affirmed on administrative review with a modified penalty, and petitioner commenced this article 78 proceeding. The Appellate Division confirmed the determination and dismissed the petition.

## DISPOSITION

dismissed

## CASES CITED

- Matter of Dickerson v. Fischer, 105 A.D.3d 1232, 1232 (N.Y. App. Div. 2013)
- Matter of Staine v. Fischer, 111 A.D.3d 999, 999 (N.Y. App. Div. 2013)
- Matter of Rodriguez v. Fischer, 111 A.D.3d 998, 998 (N.Y. App. Div. 2013)
- Matter of Spaulding v. Goord, 15 A.D.3d 768, 768-769 (N.Y. App. Div. 2005)
- Matter of Parkinson v. Selsky, 49 A.D.3d 985, 986 (N.Y. App. Div. 2008)
- Matter of Fero v. Prack, 108 A.D.3d 1004, 1005 (N.Y. App. Div. 2013)
- Matter of Quinones v. Fischer, 67 A.D.3d 1285, 1286 (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 Albany County) to review a determination of respondent which found petitioner guilty of violating certain prison disciplinary rules.

After an investigation revealed that petitioner solicited an acquaintance to bring drugs into the correctional facility, petitioner was charged in a misbehavior report with smuggling, possession of contraband, possession of drugs and failing to comply with facility visitation procedures.

Although petitioner was initially found guilty of the infractions following a tier III disciplinary hearing, this Court annulled that determination and remitted the matter for a rehearing (see Matter of Dickerson v Fischer, 105 AD3d 1232, 1232 [2013]). Following the rehearing, petitioner was again found guilty as charged and the determination was affirmed upon administrative review, with a modified penalty.

This CPLR article 78 proceeding ensued. We confirm. The misbehavior report, the hearing testimony, the transcript of the telephone conversation between petitioner and the acquaintance and the positive drug test results provide substantial evidence supporting the determination of guilt (see Matter of Staine v Fischer, 111 AD3d 999, 999 [2013]; Matter of Rodriguez v Fischer, 111 AD3d 998, 998 [2013]).

Further, inasmuch as the rehearing was commenced within the time period prescribed in the Department of Corrections and Community Supervision's reversal memorandum and proper extensions were obtained, the rehearing was commenced and completed in a timely manner (see Matter of Spaulding v Goord, 15 AD3d 768, 768-769 [2005]).

We also conclude that the Hearing Officer did not err in taking the testimony of an inmate witness outside of petitioner's presence, as petitioner was given an opportunity to provide questions for the Hearing Officer to ask the witness and was permitted to listen to the tape recording of the testimony (see 7 NYCRR 254.5 [b]; Matter of Parkinson v Selsky, 49 AD3d 985, 986 [2008]).

Finally, the record establishes that an unbroken chain of custody of the contraband was maintained (see *Matter of Fero v Prack*, 108 AD3d 1004, 1005 [2013]; *Matter of Quinones v Fischer*, 67 AD3d 1285, 1286 [2009]). Petitioner's remaining claims have been considered and found to be without merit. Peters, PJ., McCarthy, Rose, Egan Jr. and Lynch, JJ., concur. Adjudged that the determination is confirmed, without costs, and petition dismissed.

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