

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

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)

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