

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

Stewart v. McArdle

149 A.D.3d 1452 (3d Dep't 2017) · Decided April 27, 2017

SUMMARY

The court reviewed a prison disciplinary determination under CPLR article 78 after the petitioner was found guilty of violating facility correspondence procedures. It held that the misbehavior report, envelope and card, order of protection, and hearing testimony provided substantial evidence supporting the determination, and dismissed the petition.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	McCarthy, J.P.; Garry, J.; Egan Jr., J.; Devine, J.; Aarons, J.
JURISDICTION	New York
DECIDED	April 27, 2017
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner commenced a CPLR article 78 proceeding to review a prison disciplinary determination finding him guilty of violating facility correspondence procedures. The proceeding was transferred to the Appellate Division by order of Supreme Court, Albany County.
STANDARD OF REVIEW	Whether the administrative determination is supported by substantial evidence.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Stewart v. McArdle

TOPICS

judicial review of agency action

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civil procedure

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether substantial evidence supported the prison disciplinary determination finding petitioner guilty of violating facility correspondence procedures.
2. Whether petitioner's denial and explanation required reversal of the determination.

HOLDINGS

1. The determination finding petitioner guilty of violating facility correspondence procedures was supported by substantial evidence.
2. Petitioner's denial of misconduct presented a credibility issue for the hearing officer to resolve and did not undermine the determination.

KEY QUOTATIONS

“Petitioner’s denial of any misconduct, claiming that he sent the children’s card to his mother so that she could hold it until such time as it was legally permissible to give to the children, presented a credibility issue for the Hearing Officer to resolve” (149 A.D.3d at 1453)

FACTUAL BACKGROUND

An envelope addressed to petitioner's mother was discovered to contain a card addressed to petitioner's children, who were subject to an order of protection. Petitioner was charged with violating facility correspondence procedures and was found guilty after a tier II disciplinary hearing. At the hearing, petitioner denied misconduct and claimed that he sent the card to his mother for safekeeping until it was legally permissible to give it to the children.

PROCEDURAL HISTORY

After a tier II disciplinary hearing, petitioner was found guilty of violating prison correspondence procedures, and the determination was affirmed on administrative appeal. Petitioner then brought a CPLR article 78 proceeding, which was transferred to the Appellate Division for review. The court confirmed the determination and dismissed the petition.

DISPOSITION

dismissed

CASES CITED

- Matter of Cortorreal v. Goord, 41 A.D.3d 1048, 1048 (3d Dep't 2007)
- Matter of Goldberg v. Goord, 11 A.D.3d 841, 841 (3d Dep't 2004)
- Matter of Cole v. New York State Department of Correctional Services, 87 A.D.3d 1243, 1243 (3d Dep't 2011)

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 finding petitioner guilty of violating a prison disciplinary rule.

After an envelope addressed to petitioner's mother was discovered to contain a card addressed to his children who were the subject of an order of protection, petitioner was charged in a misbehavior report with violating facility correspondence procedures. Following a tier II disciplinary hearing, petitioner was found guilty of the charge and that determination was affirmed upon administrative appeal.

This CPLR article 78 proceeding ensued. We confirm. The misbehavior report, the envelope that petitioner addressed to his mother containing the card addressed to his children, the order of protection and petitioner's testimony at the hearing provide substantial evidence to support the determination that petitioner violated correspondence procedures (see *Matter of Cortorreal v Goord*, 41 AD3d 1048, 1048 [2007]; *Matter of Goldberg v Goord*, 11 AD3d 841, 841 [2004]).

Petitioner's denial of any misconduct, claiming that he sent the children's card to his mother so that she could hold it until such time as it was legally permissible to give to the children, presented a credibility issue for the Hearing Officer to resolve (see *Matter of Cole v New York State Dept. of Correctional Servs.*, 87 AD3d 1243, 1243 [2011]). McCarthy, J.P., Garry, Egan Jr., Devine and Aarons, JJ., concur.

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