

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

Matter of Moore v. Annucci

2023 NY Slip Op 01715 (3d Dep't 2023) · No. 534661 · Decided March 30, 2023

SUMMARY

The New York Appellate Division, Third Department reviewed a CPLR article 78 proceeding challenging a prison disciplinary determination finding Anum Moore guilty of refusing a direct order and violating facility visitation procedures. The court held that substantial evidence supported the determination, rejected the bias and credibility arguments, found several claims unpreserved, and confirmed the determination while dismissing the petition.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Clark, J.P.; Aarons, J.; Pritzker, J.; Reynolds Fitzgerald, J.; Ceresia, J.
JURISDICTION	New York
DECIDED	March 30, 2023
DOCKET	534661
DISPOSITION	dismissed
PROCEDURAL POSTURE	CPLR article 78 proceeding transferred to the Appellate Division to review a prison disciplinary determination finding petitioner guilty of violating prison disciplinary rules.
STANDARD OF REVIEW	Whether the disciplinary determination is supported by substantial evidence; credibility determinations are entrusted to the Hearing Officer.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Anum Moore v. Anthony J. Annucci, as Acting Commissioner of Corrections and Community Supervision

TOPICS

- judicial review of agency action
- administrative law
- standard of review
- preservation of error
- appellate procedure

PRACTICE AREAS

administrative law

prison disciplinary proceedings

appellate procedure

QUESTIONS PRESENTED

1. Whether substantial evidence supported the finding that petitioner violated the charged prison disciplinary rules.
2. Whether conflicting testimony created a credibility issue properly resolved by the Hearing Officer.
3. Whether the Hearing Officer's determination reflected bias.
4. Whether petitioner's challenges concerning evidence, witnesses, and the misbehavior report were preserved for judicial review.

HOLDINGS

1. The misbehavior report and the authoring correction officer's hearing testimony constituted substantial evidence supporting the finding of guilt.
2. Conflicting testimony presented a credibility issue for the Hearing Officer to resolve and did not undermine the disciplinary determination.
3. The record did not establish Hearing Officer bias because the finding of guilt flowed from the evidence presented rather than alleged bias.
4. Arguments concerning the availability or production of evidence, unsuccessful efforts to call witnesses, and a procedural challenge to the misbehavior report were unpreserved because they were not raised at the administrative level.

FACTUAL BACKGROUND

Anum Moore, an incarcerated individual, was charged in a misbehavior report with refusing a direct order and violating facility visitation procedures. After a tier III disciplinary hearing, the Hearing Officer found Moore guilty and imposed a penalty. Although the penalty was later modified on administrative review, the determination of guilt remained intact.

PROCEDURAL HISTORY

Petitioner was found guilty after a tier III disciplinary hearing of refusing a direct order and violating facility visitation procedures. The penalty was modified on administrative review, but the finding of guilt was affirmed. The article 78 proceeding was transferred to the Appellate Division, which confirmed the determination and dismissed the petition.

DISPOSITION

dismissed

CASES CITED

- Matter of Harrell v Annucci, 204 AD3d 1268, 1269 [3d Dept 2022]
- Matter of Mojica v Keyser, 203 AD3d 1344, 1344 [3d Dept 2022]
- Matter of Hood v Fischer, 100 AD3d 1122, 1123 [3d Dept 2012]
- Matter of Barzee v Venettozzi, 173 AD3d 1580, 1581 [3d Dept 2019]
- Matter of Sunkes v Russo, 153 AD3d 994, 995 [3d Dept 2017]
- Matter of Pena v Selsky, 53 AD3d 938, 939 [3d Dept 2008]
- Matter of DeJesus v Mayes, 196 AD3d 992, 993 [3d Dept 2021]
- Matter of Abdur-Rahman v Lilley, 210 AD3d 1163, 1163 [3d Dept 2022]
- Matter of Watson v Werlau, 201 AD3d 1288, 1288 [3d Dept 2022]
- Matter of Killimayer v Annucci, 199 AD3d 1151, 1152 [3d Dept 2021]

OPINION

PER CURIAM.

Matter of Moore v Annucci (2023 NY Slip Op 01715) Matter of Moore v Annucci 2023 NY Slip Op 01715 Decided on March 30, 2023 Appellate Division, Third Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: March 30, 2023 534661 [*1] In the Matter of Anum Moore, Petitioner, v Anthony J. Annucci, as Acting Commissioner of Corrections and Community Supervision, Respondent.

Calendar Date: February 10, 2023 Before: Clark, J.P., Aarons, Pritzker, Reynolds Fitzgerald and Ceresia, JJ. Anum Moore, Beacon, petitioner pro se. Letitia James, Attorney General, Albany (Victor Paladino of counsel), for respondent. 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 certain prison disciplinary rules.

Petitioner, an incarcerated individual, was charged in a misbehavior report with refusing a direct order and violating facility visitation procedures. Following a tier III disciplinary hearing, petitioner was found guilty of the charges and a penalty was imposed. Upon administrative review, the penalty was modified but the determination of guilt was otherwise affirmed.

This CPLR article 78 proceeding ensued. We confirm. The misbehavior report and hearing testimony from the authoring correction officer provide substantial evidence to support the finding of guilt (see Matter of Harrell v Annucci, 204 AD3d 1268, 1269 [3d Dept 2022]; Matter of Mojica v Keyser, 203 AD3d 1344, 1344 [3d Dept 2022]; Matter of Hood v Fischer, 100 AD3d 1122, 1123 [3d Dept 2012]).

Contrary to petitioner's assertions, the authoring correction officer's testimony and that of two other officers who did not observe petitioner engage in the charged conduct presented a credibility issue for the Hearing Officer to resolve (see Matter of Barzee v Venettozzi, 173 AD3d 1580, 1581

[3d Dept 2019]; Matter of Sunkes v Russo, 153 AD3d 994, 995 [3d Dept 2017]; Matter of Pena v Selsky, 53 AD3d 938, 939 [3d Dept 2008]).

We are unpersuaded by petitioner's assertion that the Hearing Officer's conclusions in this regard are indicative of bias, "as the record reflects that the determination of guilt flowed from the evidence presented and not from any alleged bias on the part of the Hearing Officer" (Matter of DeJesus v Mayes, 196 AD3d 992, 993 [3d Dept 2021]; accord Matter of Harrell v Annucci, 204 AD3d at 1269).

Petitioner's arguments pertaining to the availability or production of certain evidence, his unsuccessful attempts to call certain witnesses and his procedural challenge to the misbehavior report are unpreserved for our review as they were not raised at the administrative level (see Matter of Abdur-Rahman v Lilley, 210 AD3d 1163, 1163 [3d Dept 2022]; Matter of Watson v Werlau, 201 AD3d 1288, 1288 [3d Dept 2022]; Matter of Killimayer v Annucci, 199 AD3d 1151, 1152 [3d Dept 2021]).

To the extent that petitioner's remaining contentions are properly before us, they have been examined and found to be without merit. Clark, J.P., Aarons, Pritzker, Reynolds Fitzgerald and Ceresia, JJ., concur. ADJUDGED that the determination is confirmed, without costs, and petition dismissed.