

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

Matter of Morrishill v. Prack

120 A.D.3d 1474 (N.Y. App. Div. 2014) · Decided September 11, 2014

SUMMARY

The court confirmed a prison disciplinary determination finding the petitioner guilty of drug use after two positive marihuana tests. It rejected challenges concerning employee assistance, witness testimony, access to testing-equipment materials, and unredacted logbook entries, and dismissed the proceeding.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Stein, J.E.; Rose, J.; Egan Jr., J.; Devine, J.; Clark, J.
JURISDICTION	New York
DECIDED	September 11, 2014
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner commenced a CPLR article 78 proceeding challenging a prison disciplinary determination. The proceeding was transferred from Supreme Court to the Appellate Division, which retained jurisdiction and reviewed the determination.
STANDARD OF REVIEW	The court reviewed the prison disciplinary determination in the CPLR article 78 proceeding and determined whether the Hearing Officer properly handled petitioner’s procedural requests.
PRECEDENTIAL VALUE	Published intermediate appellate decision
PARTIES	Morrishill v. Prack

TOPICS

- agency adjudication
- judicial review of agency action
- appellate jurisdiction
- administrative law
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Hearing Officer adequately addressed petitioner's request for employee assistance after petitioner had waived that assistance.
2. Whether the Hearing Officer properly denied petitioner's request for correction-officer testimony as irrelevant.
3. Whether petitioner was entitled to a copy of the testing equipment operator's manual.
4. Whether petitioner was entitled to unredacted log book entries identifying other inmates tested on the relevant date.
5. Whether the Appellate Division should retain jurisdiction over a CPLR article 78 proceeding that appeared to raise only procedural issues and therefore should not have been transferred.

HOLDINGS

1. A Hearing Officer may address a request for employee assistance by offering to provide the inmate with whatever assistance the inmate would have requested from an assistant when the inmate previously signed a waiver of employee assistance.
2. The Hearing Officer properly may deny a request for correction-officer testimony when the testimony is irrelevant to the disciplinary proceeding.
3. Petitioner was not entitled to a copy of the operator's manual for the testing equipment under the circumstances presented.
4. Petitioner was not entitled to unredacted log book entries that would identify other inmates tested on the relevant date.
5. The Appellate Division may retain jurisdiction over an article 78 proceeding that appears to raise only procedural issues and therefore should not have been transferred when retention serves judicial economy.

KEY QUOTATIONS

“by offering to provide him with whatever he would have requested from an assistant” (1474)

FACTUAL BACKGROUND

Petitioner's urine twice tested positive for marihuana, resulting in a misbehavior report charging him with drug use. At a tier III disciplinary hearing, petitioner requested employee assistance, testimony from a correction officer, the testing equipment operator's manual, and unredacted log book entries identifying other inmates tested that day. The Hearing Officer denied or limited those requests, and petitioner was found guilty; the determination was affirmed on administrative appeal.

PROCEDURAL HISTORY

After petitioner twice tested positive for marihuana, he was charged with drug use in a misbehavior report and found guilty at a tier III disciplinary hearing. The determination was affirmed on administrative appeal. Supreme Court transferred the article 78 proceeding to the Appellate Division, which retained jurisdiction in the interest of judicial economy and confirmed the determination, dismissing the petition.

DISPOSITION

dismissed

CASES CITED

- Matter of Truman v. Fischer, 75 A.D.3d 1019, 1020 (2010)
- Matter of Alvarez v. Fischer, 94 A.D.3d 1404, 1405 (2012), leave to appeal denied, 96 A.D.3d 1703 (2012)
- Matter of Henderson v. Fischer, 98 A.D.3d 1162, 1163 (2012)
- Matter of Anderson v. Prack, 111 A.D.3d 1214, 1214 (2013)
- Matter of Kussius v. Walker, 247 A.D.2d 911, 912 (1998)
- Matter of Marshall v. Fischer, 103 A.D.3d 726, 728 (2013)
- Matter of Lindo v. Fischer, 72 A.D.3d 1295, 1296 (2010)
- Matter of Hernandez v. Fischer, 111 A.D.3d 1042, 1043 n. (2013)

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 the Commissioner of Corrections and Community Supervision which found petitioner guilty of violating a prison disciplinary rule.

After petitioner's urine twice tested positive for marihuana, he was charged in a misbehavior report with drug use. He was found guilty following a tier III disciplinary hearing, and that determination was affirmed on administrative appeal. This CPLR article 78 proceeding ensued.* We confirm. Petitioner signed a document waiving his right to employee assistance and, when he requested assistance at the hearing, the Hearing Officer appropriately acted "by offering to provide him with whatever he would have requested from an assistant" (Matter of Truman v Fischer, 75 AD3d 1019, 1020 [2010]; see Matter of Alvarez v Fischer, 94 AD3d 1404, 1405 [2012], lv denied 96 AD3d 1703 [2012]).

The Hearing Officer properly denied petitioner's ensuing request for the testimony of a correction officer as irrelevant (see Matter of Henderson v Fischer, 98 AD3d 1162, 1163 [2012]). Likewise, petitioner was not entitled to a copy of the operator's manual for the testing equipment (see Matter of Anderson v Prack, 111 AD3d 1214, 1214 [2013]; Matter of Kussius v Walker, 247 AD2d 911, 912 [1998]; but see Matter of Marshall v Fischer, 103 AD3d 726, 728 [2013]).

The Hearing Officer also appropriately denied petitioner's request for unredacted log book entries that would have identified other inmates who had been tested on the day in question (see *Matter of Lindo v Fischer*, 72 AD3d 1295, 1296 [2010]). Petitioner's remaining claims have been examined and found to be meritless. Stein, J.E, Rose, Egan Jr., Devine and Clark, JJ., concur. *1475Adjudged that the determination is confirmed, without costs, and petition dismissed.

While we agree with petitioner that the petition appears to raise only-procedural issues and should not have been transferred to this Court, we will retain jurisdiction in the interest of judicial economy (see *Matter of Hernandez v Fischer*, 111 AD3d 1042, 1043 n [2013]).