

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

Wheeler v. Fischer

96 A.D.3d 1246 (3d Dep't 2012) · Decided June 21, 2012

SUMMARY

The Appellate Division affirmed dismissal as moot of an inmate’s CPLR article 78 proceeding challenging the denial of a merit time allowance. An intervening, unchallenged disciplinary determination and resulting 60-day keeplock penalty independently rendered the petitioner ineligible for a merit time allowance.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Per Curiam; Peters, P.J.; Lahtinen, J.; Malone Jr., J.; Kavanagh, J.; McCarthy, J.
JURISDICTION	New York
DECIDED	June 21, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed from a judgment dismissing as moot his CPLR article 78 proceeding challenging the denial of merit time allowances.
PRECEDENTIAL VALUE	published opinion
PARTIES	Wheeler v. Fischer

TOPICS

- mootness
- judicial review of agency action
- administrative law
- appellate procedure
- civil procedure

PRACTICE AREAS

- administrative law
- civil procedure
- prison disciplinary proceedings

QUESTIONS PRESENTED

1. Whether the petition challenging the prior denial of merit time allowances became moot when an intervening, unchallenged disciplinary violation and penalty independently rendered petitioner ineligible

for a merit time allowance.

HOLDINGS

1. The proceeding was moot because the intervening, unchallenged drug-use violation and accompanying 60-day keeplock penalty independently rendered petitioner ineligible for a merit time allowance.

KEY QUOTATIONS

“Inasmuch as the intervening unchallenged drug use violation and accompanying penalty, standing alone, render petitioner ineligible for a merit time allowance pursuant to the relevant statute and regulations, we agree with Supreme Court that this proceeding challenging the prior denial of merit time allowances is now moot” (96 A.D.3d at 1247)

FACTUAL BACKGROUND

Petitioner was found guilty at three tier II prison disciplinary hearings and received aggregate keeplock penalties exceeding 60 days, resulting in a determination that he was ineligible for a merit time allowance. While his challenge to that determination was pending, he was found guilty at a tier III hearing for drug use and received a 60-day keeplock penalty, which independently made him ineligible for the allowance. He did not administratively appeal the tier III determination.

PROCEDURAL HISTORY

Petitioner, an inmate, challenged an administrative determination that he was ineligible for a merit time allowance because aggregate keeplock penalties from three tier II disciplinary hearings exceeded 60 days. While the article 78 proceeding was pending, he received an unchallenged tier III disciplinary penalty that independently rendered him ineligible for a merit time allowance. Supreme Court granted respondent's motion to dismiss the proceeding as moot, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Ramos v. New York State Department of Correctional Services, 62 A.D.3d 1174, 1174-1175 (2009)
- Matter of Justice v. Fischer, 74 A.D.3d 1648, 1648-1649 (2010), leave denied, 15 N.Y.3d 710 (2010)
- Matter of Swinton v. Travis, 16 A.D.3d 851, 853 (2005)

OPINION

Wheeler v. Fischer 96 A.D.3d 1246

PER CURIAM.

Appeal from a judgment of the Supreme Court (Platkin, J.), entered June 22, 2011 in Albany County, which, in a proceeding pursuant to CPLR article 78, granted respondent's motion to

dismiss the petition. Petitioner, an inmate, was found guilty after three separate tier II prison disciplinary hearings of violating numerous rules, after which it was determined that he was ineligible to receive a merit time allowance because the aggregate keeplock penalties that he received as a result of the three hearings exceeded 60 days (see 7 NYCRR 280.2 [b] [3]). Petitioner filed an administrative appeal and commenced this CPLR article 78 proceeding challenging respondent's ruling upholding that determination. While this proceeding was pending in Supreme Court, however, petitioner was found guilty after a tier III disciplinary hearing *1247of violating the disciplinary rule prohibiting drug use and received a penalty that included 60 days of keeplock and a recommended loss of three months good time credit (see 7 NYCRR 280.2 [b] [2] [xiii]; [3]). Petitioner did not administratively appeal the tier III determination and respondent thereafter moved to dismiss the subject proceeding as moot. Supreme Court granted this motion, prompting this appeal. Inasmuch as the intervening unchallenged drug use violation and accompanying penalty, standing alone, render petitioner ineligible for a merit time allowance pursuant to the relevant statute and regulations (see *Matter of Ramos v New York State Dept. of Correctional Servs.*, 62 AD3d 1174, 1174-1175 [2009]; see also *Correction Law § 803 [1] [d] [iv]*; 7 NYCRR 280.2 [b] [2] [xiii]; [3]), we agree with Supreme Court that this proceeding challenging the prior denial of merit time allowances is now moot (see generally *Matter of Justice v Fischer*, 74 AD3d 1648, 1648-1649 [2010], lv denied 15 NY3d 710 [2010]; *Matter of Swinton v Travis*, 16 AD3d 851, 853 [2005]). We have examined petitioner's remaining arguments and find them to be unpersuasive. Peters, P.J., Lahtinen, Malone Jr., Kavanagh and McCarthy, JJ., concur. Ordered that the judgment is affirmed, without costs.