

SUPREME COURT OF THE STATE OF ALASKA

David C. Nordlund v. State of Alaska, Department of Corrections

No. 7633; Supreme Court No. S-18051 · No. Supreme Court No. S-18051; Superior Court No. 3AN-20-08336
CI; No. 7633 · Decided December 9, 2022

SUMMARY

The Alaska Supreme Court affirmed the superior court’s decision upholding a Department of Corrections disciplinary ruling against David C. Nordlund. The court held that Nordlund failed to show prejudice from the refusal to allow in-person witness testimony or from the omission of surveillance video from the appellate record. It also upheld the statutory “some evidence” standard of review for prison disciplinary decisions and concluded that the evidence supported the disciplinary ruling.

CASE DETAILS

COURT	Supreme Court of the State of Alaska
WRITING FOR THE COURT	Maassen, Justice; Winfree, Chief Justice; Carney, Justice; Borghesan, Justice; Henderson, Justice
JURISDICTION	Alaska
DECIDED	December 9, 2022
DOCKET	Supreme Court No. S-18051; Superior Court No. 3AN-20-08336 CI; No. 7633
DISPOSITION	affirmed
PROCEDURAL POSTURE	Nordlund appealed a Department of Corrections disciplinary decision to the Alaska Superior Court. After the superior court rejected his due-process, retaliation, evidentiary-record, and standard-of-review arguments, Nordlund appealed to the Alaska Supreme Court.
STANDARD OF REVIEW	The court reviews procedural due-process and prejudice issues de novo and independently reviews the merits of an administrative decision when the superior court acts as an intermediate appellate court. Under AS 33.30.295(b)(3), a DOC disciplinary decision may not be reversed for insufficient evidence when the record shows that the decision was based on some evidence that could support the result.
PRECEDENTIAL VALUE	Published Alaska Supreme Court opinion
PARTIES	David C. Nordlund v. State of Alaska, Department of Corrections

TOPICS

prisoners rights agency adjudication judicial review of agency action procedural due process
standard of review

PRACTICE AREAS

administrative law constitutional law prisoner disciplinary proceedings appellate procedure civil rights

QUESTIONS PRESENTED

1. Whether the hearing officer's refusal to hear Nordlund's witnesses in person violated procedural due process and prejudiced his right to a fair adjudication.
2. Whether DOC's failure to include the surveillance video in the record on appeal violated procedural due process and prejudiced Nordlund's appeal.
3. Whether AS 33.30.295(b)(3)'s statutory "some evidence" standard of judicial review for DOC disciplinary decisions violates due process or the Alaska Constitution.
4. Whether the evidence supported the disciplinary decision under the statutory "some evidence" standard.

HOLDINGS

1. Even assuming that the refusal to hear in-person testimony could implicate procedural due process, reversal requires both a constitutional violation and prejudice to the prisoner's right to a fair adjudication. Nordlund failed to show prejudice because he did not identify information that in-person testimony would have added beyond the written statements.
2. The omission of the surveillance video from the superior-court record did not violate Nordlund's procedural due process rights because he failed to demonstrate prejudice to his appeal.
3. The statutory "some evidence" standard in AS 33.30.295(b)(3) satisfies the Alaska Constitution, and the superior court properly applied that standard to Nordlund's DOC disciplinary appeal.
4. The disciplinary decision was supported by some evidence because it relied on incident reports from two officers who were present during the alleged misconduct, a third officer endorsed those reports, and the surveillance video did not obviously contradict them.

KEY QUOTATIONS

"Prison disciplinary proceedings take place in a highly charged atmosphere, and prison administrators must often act swiftly on the basis of evidence that might be insufficient in less exigent circumstances. The fundamental fairness guaranteed by the Due Process Clause does not require courts to set aside decisions of prison administrators that have some basis in fact." (at 10-11)

FACTUAL BACKGROUND

DOC officers accused Nordlund of stopping at several cells and knocking on windows and doors after returning from the bathroom after 10:00 p.m., then becoming argumentative and resisting the officers' escort to segregation. Nordlund requested a disciplinary hearing and submitted written statements from five witnesses,

along with surveillance video; the hearing officer reviewed the written evidence and video but declined to hear the witnesses in person. The hearing officer found Nordlund guilty and imposed ten days of suspended punitive segregation. The video was not included in the record transmitted to the superior court, although the court listened to the disciplinary-hearing recording describing the video.

PROCEDURAL HISTORY

DOC charged Nordlund with violating a regulation prohibiting conduct that disrupts or interferes with the orderly administration or security of the facility. After a disciplinary hearing, the hearing officer found him guilty and imposed ten days of punitive segregation, suspended if he avoided another guilty finding for 180 days. The prison superintendent denied his administrative appeal. The superior court affirmed under the statutory "some evidence" standard and denied reconsideration. The Alaska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Brandon v. State, Dep't of Corr., 73 P.3d 1230, 1233 (Alaska 2003)
- Walker v. State, Dep't of Corr., 421 P.3d 74, 76, 81-82 (Alaska 2018)
- Button v. Haines Borough, 208 P.3d 194, 200 (Alaska 2009)
- Huber v. State, Dep't of Corr., 426 P.3d 969, 973-75 (Alaska 2018)
- Alvarez v. Ketchikan Gateway Borough, 28 P.3d 935, 939 (Alaska 2001)
- Oceanview Homeowners Ass'n, Inc. v. Quadrant Constr. & Eng'g, 680 P.2d 793, 798 (Alaska 1984)
- Carlson v. Renkes, 113 P.3d 638, 643 (Alaska 2005)
- Superintendent, Mass. Corr. Inst., Walpole v. Hill, 472 U.S. 445, 455-57 (1985)
- Sagoonick v. State, 503 P.3d 777, 804 (Alaska 2022)
- Manning v. State, Dep't of Fish & Game, 355 P.3d 530, 535 (Alaska 2015)
- Frank v. State, 97 P.3d 86, 91 (Alaska App. 2004)
- Gudmundson v. State, 763 P.2d 1360, 1363 (Alaska App. 1988)
- United States v. Maes, 546 F.3d 1066, 1068 (9th Cir. 2008)
- Muntaquim v. Kelley, 581 S.W.3d 496, 500-01 (Ark. 2019)
- In re Gomez, 201 Cal. Rptr. 3d 124, 133 (Cal. App. 2016)
- Kodama v. Johnson, 786 P.2d 417, 420 (Colo. 1990)
- State v. Iowa Dist. Ct. for Jones Cnty., 888 N.W.2d 655, 668-69 (Iowa 2016)
- May v. Cline, 372 P.3d 1242, 1245 (Kan. 2016)
- In re Anderson, 772 P.2d 510, 512 (Wash. 1989)
- State v. Avery, 211 P.3d 1154, 1157 (Alaska App. 2009)
- Bell v. Wolfish, 441 U.S. 520, 547 (1979)

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