

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK

Brown v. Fischer

91 A.D.3d 1336, 936 N.Y.S.2d 831 (N.Y. App. Div. 2012) · Decided January 31, 2012

SUMMARY

The court annulled a prison disciplinary determination finding the petitioner guilty of making threats and false statements. It held that the misbehavior report relied on unreliable hearsay and that the handwriting exemplars did not independently constitute substantial evidence; because the petitioner had already served the penalty, the court ordered expungement of the violations from his institutional record.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York
WRITING FOR THE COURT	Scudder, E.J.; Smith, J.; Sconiers, J.; Gorski, J.; Martoche, J.
JURISDICTION	New York
DECIDED	January 31, 2012
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner commenced a CPLR article 78 proceeding seeking annulment of a prison disciplinary determination finding that he violated inmate rules concerning threats of violence and false statements. The Appellate Division reviewed the determination for substantial evidence.
STANDARD OF REVIEW	Whether the administrative determination was supported by substantial evidence.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Brown v. Fischer

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QUESTIONS PRESENTED

1. Whether the misbehavior report and related hearsay information constituted substantial evidence supporting the prison disciplinary determination.
2. Whether the hearing officer could rely on a comparison of handwriting samples without expert testimony and whether the samples provided substantial evidence of petitioner's authorship.
3. What remedy was appropriate because petitioner had apparently already served the administrative penalty.

HOLDINGS

1. A misbehavior report not written by an officer who witnessed the charged conduct cannot constitute substantial evidence unless the record contains facts establishing some indicia of reliability for the hearsay it contains. Because the record provided no information permitting assessment of the unnamed informants' reliability, the report did not constitute substantial evidence.
2. A hearing officer may independently compare handwriting samples without expert testimony, but the samples must contain sufficient similarities to constitute substantial evidence that they were written by the same person. The samples here did not meet that standard.
3. When the petitioner has already served the administrative penalty, the appropriate remedy is expungement of all references to the violations from the petitioner's institutional record.

KEY QUOTATIONS

“Where, however, “the misbehavior report was not written by a correction officer who witnessed the conduct in question, the record must contain facts establishing some indicia of reliability to the hearsay before the report may be considered sufficiently relevant and probative to constitute substantial evidence”” (at 1336)

“the trier of fact (here, the Hearing Officer) may make his or her own comparison of handwriting samples in the absence of expert testimony on the subject” (at 1337)

“the handwriting samples alone — the . . . letter[] and exemplars — can form the basis for a determination of guilt in a case such as this if there are sufficient similarities between the two to comprise substantial evidence that they were written by the same person” (at 1337)

FACTUAL BACKGROUND

Petitioner was charged with writing a threatening letter to a correctional-facility counselor. The inmate misbehavior report was based on information relayed through a correction officer and counselor from unnamed inmate informants, rather than firsthand observations. The correction officer also compared the allegedly threatening letter with handwriting exemplars obtained from petitioner, but the Appellate Division found insufficient similarities to establish that petitioner wrote the letter.

PROCEDURAL HISTORY

Following a Tier III disciplinary hearing, petitioner was found guilty of violating inmate rules 102.10 and 107.20 and apparently served the resulting administrative penalty. Petitioner commenced an article 78 proceeding. The

Appellate Division concluded that the determination was unsupported by substantial evidence, annulled it, and directed expungement of the violations from petitioner's institutional record.

DISPOSITION

other

REMAND INSTRUCTIONS

The disciplinary determination was annulled, and all references to the violations of inmate rules 102.10 and 107.20 were ordered expunged from petitioner's institutional record.

CASES CITED

- People ex rel. Vega v Smith, 66 N.Y.2d 130, 139 (1985)
- Matter of McIntosh v Coughlin, 155 A.D.2d 762, 763 (1989)
- Matter of Abdur-Raheem v Mann, 85 N.Y.2d 113, 121 (1995)
- Matter of Debose v Selsky, 12 A.D.3d 1003, 1004 (2004)
- Matter of Holmes v Senkowski, 238 A.D.2d 629 (1997)
- Matter of Daise v Giambruno, 279 A.D.2d 911, 911-912 (2001)
- Matter of Smith v Coughlin, 198 A.D.2d 726, 726 (1993)
- Matter of Cody v Fischer, 46 A.D.3d 1371 (2007)

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