

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW
YORK, FOURTH DEPARTMENT**

Jackson v. Annucci

122 A.D.3d 1288 (N.Y. App. Div. 4th Dep't 2014) · Decided November 14, 2014

SUMMARY

The court unanimously confirmed a tier III prison disciplinary determination finding that the petitioner violated various inmate rules and dismissed the CPLR article 78 petition. The court held that the determination was supported by substantial evidence, rejected claims of hearing-officer bias and denial of witnesses or documentary evidence, and upheld the transfer of the proceeding despite the missing administrative appeal record.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Fourth Department
WRITING FOR THE COURT	Presiding Justice Scudder; Justice Centra; Justice Lindley; Justice Sconiers; Justice DeJoseph
JURISDICTION	New York
DECIDED	November 14, 2014
DISPOSITION	dismissed
PROCEDURAL POSTURE	CPLR article 78 proceeding transferred from Supreme Court, Wyoming County, to the Fourth Department to review a determination made after a tier III inmate disciplinary hearing.
STANDARD OF REVIEW	Whether the administrative determination was supported by substantial evidence and whether the hearing complied with applicable procedural and impartiality requirements.
PRECEDENTIAL VALUE	Published intermediate appellate opinion
PARTIES	Jackson v. Annucci

TOPICS

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QUESTIONS PRESENTED

1. Whether the prison disciplinary determination was supported by substantial evidence, including confidential testimony.
2. Whether the hearing officer was biased and whether alleged bias affected the determination.
3. Whether petitioner was improperly denied the opportunity to call witnesses and present documentary evidence in support of his retaliation defense.
4. Whether the absence of the administrative-appeal record required dismissal or prevented transfer of the CPLR article 78 proceeding to the Appellate Division.

HOLDINGS

1. The determination was supported by substantial evidence, including confidential testimony, and therefore was properly confirmed.
2. Petitioner failed to establish that the hearing officer was biased or that the determination resulted from alleged bias.
3. The hearing officer properly rejected petitioner's requested additional testimony and documentary evidence because the material would have been redundant or immaterial.
4. The absence of the administrative-appeal record did not constitute a fatal defect requiring dismissal or preventing transfer of the proceeding to the Appellate Division.

KEY QUOTATIONS

“The additional testimony [and documentary evidence] requested by petitioner would have been either redundant or immaterial” (1289)

FACTUAL BACKGROUND

Following a tier III prison disciplinary hearing, petitioner was found to have violated various inmate rules. He challenged the determination on the grounds that it was unsupported by substantial evidence, that the hearing officer was biased, that he was improperly denied witnesses and documentary evidence relevant to a retaliation defense, and that the proceeding was improperly transferred because the administrative-appeal record was missing.

PROCEDURAL HISTORY

Petitioner commenced a CPLR article 78 proceeding in Supreme Court seeking to annul a prison disciplinary determination finding that he violated various inmate rules. Supreme Court transferred the proceeding to the Fourth Department after determining that the absence of the administrative-appeal record was not a fatal defect because respondent would not assert failure to exhaust administrative remedies. The Fourth Department unanimously confirmed the determination and dismissed the petition.

DISPOSITION

dismissed

CASES CITED

- Matter of Stewart v. Fischer, 109 A.D.3d 1122, 1123 (2013), lv. denied, 22 N.Y.3d 858 (2013)
- People ex rel. Vega v. Smith, 66 N.Y.2d 130, 139 (1985)
- Matter of Colon v. Fischer, 83 A.D.3d 1500, 1501-1502 (2011)
- Matter of Sanchez v. Irvin, 186 A.D.2d 996, 996 (1992), lv. denied, 81 N.Y.2d 702 (1993)
- Matter of Burr v. Fischer, 95 A.D.3d 1538, 1538-1539 (2012), lv. denied, 19 N.Y.3d 811 (2012)
- Matter of Duchmann v. Town of Hamburg, 93 A.D.3d 1289, 1289 (2012)

OPINION

PER CURIAM.

Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Wyoming County [Michael M. Mohun, A.J.], entered Apr. 22, 2014) to review a determination of respondent.

The determination found after a tier III hearing that petitioner had violated various inmate rules. It is hereby ordered that the determination is unanimously confirmed without costs and the petition is dismissed. Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking to annul the determination, following a tier III disciplinary hearing, that he violated various inmate rules.

Contrary to petitioner's contention, the determination is supported by substantial evidence, including confidential testimony (see Matter of Stewart v Fischer, 109 AD3d 1122, 1123 [2013], lv denied 22 NY3d 858 [2013]; see generally People ex rel. Vega v Smith, 66 NY2d 130, 139 [1985]).

We reject petitioner's further contention that the hearing officer was biased or that the determination flowed from the alleged bias (see Matter of Colon v Fischer, 83 AD3d 1500, 1501-1502 [2011]). Petitioner contends that he was denied his right to call certain witnesses and present certain documentary evidence in support of his defense of retaliation.

We reject that contention. "The additional testimony [and documentary evidence] requested by petitioner would have been either redundant or immaterial" (Matter of Sanchez v Irvin, 186 AD2d 996, 996 [1992], lv denied 81 NY2d 702 [1993]; see Matter of Burr v Fischer, 95 AD3d 1538, 1538-1539 [2012], *1289lv denied 19 NY3d 811 [2012]).

Finally, we reject petitioner's contention that this matter was improperly transferred to this Court because respondent failed to include a record of the administrative appeal with his answer. That record could not be located and, in view of respondent's assertion that he would not make a claim

that petitioner failed to exhaust his administrative remedies, we conclude that Supreme Court properly determined that there was no “fatal defect” and transferred the proceeding to this Court (see generally *Matter of Duchmann v Town of Hamburg*, 93 AD3d 1289, 1289 [2012]).

Present — Scudder, EJ., Centra, Lindley, Sconiers and DeJoseph, JJ.

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