

**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.

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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