

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

Thomassini v. Prack

111 A.D.3d 1201 (N.Y. App. Div. 2013) · Decided November 27, 2013

SUMMARY

The New York Appellate Division reviewed a CPLR article 78 proceeding challenging a prison disciplinary determination finding the petitioner guilty of violent conduct, assault, and weapon possession. The court held that substantial evidence supported the determination and that the reduced penalty was not disproportionate to the misconduct, confirming the determination and dismissing the petition.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Peters, E.J.; Stein, J.; Spain, J.; Garry, J.
JURISDICTION	New York
DECIDED	November 27, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	CPLR article 78 proceeding transferred to the Appellate Division to review a determination of the Commissioner of Corrections and Community Supervision finding petitioner guilty of prison disciplinary violations.
STANDARD OF REVIEW	Whether the disciplinary determination is supported by substantial evidence and whether the penalty is so disproportionate to the offense as to be shocking to one's sense of fairness.
PRECEDENTIAL VALUE	Published intermediate appellate decision
PARTIES	Thomassini v. Prack

TOPICS

- judicial review of agency action
- administrative law
- standard of review
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether substantial evidence supported the determination that petitioner violated prison disciplinary rules by engaging in violent conduct, assaulting an inmate, and possessing a weapon.
2. Whether the disciplinary penalty was so disproportionate to petitioner's misconduct as to be shocking to one's sense of fairness.

HOLDINGS

1. The disciplinary determination was supported by substantial evidence.
2. The penalty was not so disproportionate to the offense as to be shocking to one's sense of fairness.

KEY QUOTATIONS

“the misbehavior report, documentary evidence and testimony of the inmates who were the victims of the attack and who identified petitioner as their attacker amply support the determination of guilt” (1201-1202)

“we do not find that the penalty is so disproportionate to the offense as to be shocking to one’s sense of fairness” (1202)

FACTUAL BACKGROUND

Correction officials learned that petitioner attacked two roommates by striking them with a hard object concealed in a sock or T-shirt. One victim suffered a fractured skull requiring hospitalization and surgery. Petitioner was charged with violent conduct, assaulting an inmate, and possessing a weapon, found guilty after a tier III hearing, and received confinement in special housing, loss of privileges, and loss of good time.

PROCEDURAL HISTORY

Following a tier III disciplinary hearing, petitioner was found guilty of violent conduct, assaulting an inmate, and possessing a weapon. The determination and imposed penalty were affirmed on administrative appeal, after which petitioner commenced this CPLR article 78 proceeding. The Appellate Division confirmed the determination and dismissed the petition.

DISPOSITION

affirmed

CASES CITED

- Matter of McDaniels v Bezio, 76 A.D.3d 1129, 1129 (2010)
- Matter of Benvenuti v Fischer, 67 A.D.3d 1105, 1105 (2009)
- Matter of Rivera v Goord, 38 A.D.3d 964, 964-965 (2007)
- Matter of Sheppard v Goord, 264 A.D.2d 916, 917 (1999)

OPINION

PER CURIAM.

Proceeding pursuant to CPLR article 78 (transferred to this Court by order of the Supreme Court, entered in Albany County) to review a determination of the Commissioner of Corrections and Community Supervision which found petitioner guilty of violating certain prison disciplinary rules. During the course of an investigation, correction officials learned that petitioner was involved in an incident in which he attacked two of his roommates by striking them with a hard object concealed in either a sock or a T-shirt.

One of the roommates suffered a fractured skull as a result, requiring his hospitalization and surgery. Petitioner was thereafter charged in a misbehavior report with engaging in violent conduct, assaulting an inmate and possessing a weapon. Following a tier III disciplinary hearing, he was found guilty of the charges. A penalty of 36 months of confinement in the special housing unit and loss of privileges, as well as 12 months of loss of good time was imposed.

The determination was later affirmed on administrative appeal. This CPLR article 78 proceeding ensued. We confirm. To the extent that petitioner raises the issue of substantial evidence, we find that the misbehavior report, documentary evidence and testimony of the inmates who were the victims of the attack and who identified petitioner as their attacker amply support the determination of guilt (see *Matter of McDaniels v Bezio*, 76 AD3d 1129, 1129 [2010]; *Matter of Benvenuti v Fischer*, 67 AD3d 1105, 1105 [2009]).

As for the severity of the penalty, respondents represent in their brief that the portion of the penalty requiring petitioner to be confined to the special housing unit has been reduced to 30 months and 29 days. Under the circumstances presented and given the seriousness of petitioner's misconduct in assaulting two inmates, we do not find that the penalty is so disproportionate to the offense as to be shocking to one's sense of fairness (see *Matter of Rivera v Goord*, 38 AD3d 964, 964-965 [2007]; *Matter of Sheppard v Goord*, 264 AD2d 916, 917 [1999]).

Peters, EJ., Stein, Spain and Garry, JJ., concur. Adjudged that the determination is confirmed, without costs, and petition dismissed.