

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

Hodge v. Selsky

53 A.D.3d 953 (N.Y. App. Div. 3d Dep't 2008) · Decided July 24, 2008

SUMMARY

The New York Appellate Division, Third Department, reviewed a CPLR article 78 challenge to two prison disciplinary determinations. The court held that substantial evidence did not support the findings of assaulting staff and engaging in violent conduct, ordered those findings expunged, and otherwise upheld the determinations concerning harassment, refusal of a direct order, and tampering with state property. The judgment was modified accordingly and affirmed as modified.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Cardona, P.J.; Mercure, J.; Carpinello, J.; Kane, J.; Malone Jr., J.
JURISDICTION	New York
DECIDED	July 24, 2008
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a Supreme Court judgment dismissing a CPLR article 78 petition challenging prison disciplinary determinations.
STANDARD OF REVIEW	Whether the disciplinary determinations were supported by substantial evidence; whether the hearing record permitted meaningful judicial review.
PRECEDENTIAL VALUE	published
PARTIES	Hodge v. Selsky

TOPICS

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

PRACTICE AREAS

- administrative law
- prison disciplinary proceedings
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether inaudible portions of the tier III hearing transcript prevented meaningful judicial review.
2. Whether substantial evidence supported the findings that Hodge engaged in violent conduct and assaulted staff.
3. Whether Hodge could challenge the determination concerning refusing a direct order after pleading guilty to that charge.
4. Whether substantial evidence supported the findings of harassment and tampering with state property.
5. Whether the penalty issue required remand after the findings of assaulting staff and engaging in violent conduct were annulled.

HOLDINGS

1. The inaudible portions of the tier III hearing transcript were not sufficiently significant to preclude meaningful judicial review.
2. Substantial evidence did not support the findings that Hodge engaged in violent conduct or assaulted staff; those portions of the determination were annulled and the references expunged from his institutional record.
3. Remand for redetermination of the penalty was unnecessary because no loss of good time was imposed and Hodge had already served the penalty.
4. Hodge could not challenge the determination of guilt on the refusing-a-direct-order charge because he had pleaded guilty to it.
5. The findings of harassment and tampering with state property were supported by substantial evidence.
6. Although the proceeding should initially have been transferred to the Appellate Division because it raised a substantial-evidence question, the court could consider the issue de novo and render judgment.

KEY QUOTATIONS

“Accordingly, the determination must be annulled to that extent and all references thereto expunged from petitioner’s institutional record.” (53 A.D.3d at 954)

“Ordered that the judgment is modified, without costs, by reversing so much thereof as dismissed that part of the petition seeking to annul the determination of guilt with respect to the charges of assaulting staff and engaging in violent conduct; petition granted to that extent and the Commissioner of Correctional Services is directed to expunge all references thereto from petitioner’s institutional record; and, as so modified, affirmed.” (53 A.D.3d at 954)

FACTUAL BACKGROUND

Hodge was charged with prison disciplinary violations arising from an incident involving his use of a facility nurse's first name and refusal to leave a room, and from a cell search uncovering missing screws and a piece of a headphone with a wall jack adapter. After separate tier III and tier II hearings, he was found guilty of harassment, refusing a direct order, engaging in violent conduct, assaulting staff, and tampering with state

property. The Appellate Division found substantial evidence lacking only as to the findings of engaging in violent conduct and assaulting staff.

PROCEDURAL HISTORY

Hodge was found guilty in separate tier III and tier II prison disciplinary hearings of multiple rule violations, and the determinations were affirmed on administrative appeal. Hodge commenced a CPLR article 78 proceeding in Supreme Court, Albany County. Supreme Court dismissed the petition, and Hodge appealed. The Appellate Division modified the judgment by annulling the findings of assaulting staff and engaging in violent conduct and directing expungement of those findings, while affirming the judgment in all other respects.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

No remand for penalty redetermination was required. The Commissioner of Correctional Services was directed to expunge all references to the findings of assaulting staff and engaging in violent conduct from Hodge's institutional record.

CASES CITED

- Matter of McKethan v. Selsky, 49 A.D.3d 1113 (2008)
- Matter of Green v. Smith, 40 A.D.3d 1287, 1287 (2007)
- Matter of Rivera v. Goord, 47 A.D.3d 1141 (2008)
- Matter of Thorpe v. Goord, 13 A.D.3d 690, 690-691 (2004)
- Matter of Lynch v. Goord, 285 A.D.2d 878, 879 (2001)
- Matter of Parkinson v. Selsky, 45 A.D.3d 1079, 1080 (2007)