

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

Matter of Joseph v. Polizzi

2018 NY Slip Op 8605 (N.Y. Ct. App. 2018) · No. 526585 · Decided December 13, 2018

SUMMARY

The New York Appellate Division, Third Department, reviewed a CPLR article 78 challenge to a prison disciplinary determination finding the petitioner guilty of multiple violations, including possessing marihuana and a weapon and engaging in violent conduct. The court held that substantial evidence supported the determination, the chain of custody was adequately established, and the petitioner was not improperly removed from the hearing or denied relevant witnesses. The court confirmed the determination and dismissed the proceeding.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	McCarthy, J.P.; Devine, J.; Aarons, J.; Rumsey, J.; Pritzker, J.
JURISDICTION	New York
DECIDED	December 13, 2018
DOCKET	526585
DISPOSITION	dismissed
PROCEDURAL POSTURE	CPLR article 78 proceeding transferred to the Appellate Division by order of the Supreme Court, Albany County, to review a determination of the Commissioner of Corrections and Community Supervision finding petitioner guilty of prison disciplinary violations.
STANDARD OF REVIEW	Whether the administrative determination is supported by substantial evidence; the court also reviewed alleged procedural errors for legal sufficiency and preservation.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Jeffrey Joseph v. Anthony Polizzi, as Inmate Disciplinary Hearing Officer, et al.

TOPICS

judicial review of agency action

agency adjudication

evidence

preservation of error

appellate procedure

PRACTICE AREAS

administrative law

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evidence

QUESTIONS PRESENTED

1. Whether substantial evidence supported the determination finding petitioner guilty of the charged prison disciplinary violations.
2. Whether the chain of custody for the contraband was sufficiently established despite notations on the forms not being personally written by each correction officer.
3. Whether petitioner was improperly removed from the disciplinary hearing because of disruptive conduct.
4. Whether petitioner was denied the right to call witnesses and whether that claim was preserved.
5. Whether the Hearing Officer properly excluded testimony from a deputy director of security concerning another inmate's disciplinary hearing.
6. Whether the Hearing Officer was biased.

HOLDINGS

1. The misbehavior reports, related documentation, correction-officer testimony, and complete video recording provided substantial evidence supporting the determination of guilt.
2. The chain of custody was sufficiently established where the chain-of-custody forms, misbehavior report, and related documentary evidence demonstrated a secure and unbroken chain.
3. Petitioner's removal from the hearing was proper because he continued interrupting and arguing with the Hearing Officer after repeated warnings that disruptive conduct could result in removal.
4. Petitioner failed to preserve his claim that he was denied the right to call witnesses because he did not identify the witnesses he wanted called.
5. The Hearing Officer properly denied as irrelevant testimony from the deputy director of security concerning the results of another inmate's disciplinary hearing.
6. The record did not establish Hearing Officer bias; the determination of guilt resulted from the evidence presented rather than alleged bias.

KEY QUOTATIONS

*“Although the record reflects that petitioner made a general request during the hearing that “each and every officer” be called as a witness, petitioner was removed from the hearing for his disruptive behavior before the witnesses or the relevance of their testimony could be ascertained in order for the Hearing Officer to determine whether such witnesses were relevant or if the testimony would be redundant.” (*2)*

FACTUAL BACKGROUND

Correction officers discovered a green leafy substance, later identified as marihuana, and a scalpel wrapped in tape hidden in the seam of petitioner's boxer shorts. Petitioner lunged at a correction officer and snatched the boxer shorts away, leading to a struggle. The disciplinary hearing record included misbehavior reports, related documentation, correction-officer testimony, chain-of-custody forms, and a complete video recording of the incident.

PROCEDURAL HISTORY

Petitioner was charged in two misbehavior reports with multiple prison disciplinary violations arising from the discovery of marihuana and a scalpel hidden in his boxer shorts and a subsequent struggle with correction officers. After a tier III disciplinary hearing, he was found guilty of all charges except assaulting staff and refusing a direct order. The administrative appeal modified the penalty but otherwise affirmed the determination. Petitioner then commenced this CPLR article 78 proceeding, which was transferred to the Appellate Division.

DISPOSITION

dismissed

CASES CITED

- Matter of Young v. Rodriguez, 165 A.D.3d 1338, 1338 (N.Y. App. Div. 2018)
- Matter of Mitchell v. Venettozzi, 148 A.D.3d 1406, 1407 (N.Y. App. Div. 2017)
- Matter of Perez v. Polizzi, 160 A.D.3d 1319, 1319-1320 (N.Y. App. Div. 2018)
- Matter of Rosario v. Selsky, 5 A.D.3d 896, 897 (N.Y. App. Div. 2004)
- Matter of Oms v. Goord, 36 A.D.3d 1105, 1106 (N.Y. App. Div. 2007), leave to appeal denied, 8 N.Y.3d 811 (2007)
- Matter of McMaster v. Rodriguez, 159 A.D.3d 1173, 1174 (N.Y. App. Div. 2018)
- Matter of Micolo v. Annucci, 140 A.D.3d 1442, 1443 (N.Y. App. Div. 2016)
- Matter of Barnes v. Venettozzi, 135 A.D.3d 1250, 1251 (N.Y. App. Div. 2016)
- Matter of Foster v. Prack, 144 A.D.3d 1287, 1288 (N.Y. App. Div. 2016)
- Matter of Horton v. Annucci, 163 A.D.3d 1385, 1386 (N.Y. App. Div. 2018)