

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK

Diaz v. Fischer

70 A.D.3d 1082 (N.Y. App. Div. 2010) · Decided February 4, 2010

SUMMARY

The court annulled a prison disciplinary determination finding Diaz guilty of assaulting staff and related violations. It held that the hearing officer violated Diaz’s constitutional right to call witnesses by denying testimony from an Inspector General’s investigator and a psychologist when their testimony could have been material to his defense. The court ordered expungement of all references to the matter from Diaz’s institutional record.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York
WRITING FOR THE COURT	Per curiam; Cardona, P.J.; Peters, J.; Spain, J.; Lahtinen, J.; Stein, J.
JURISDICTION	New York
DECIDED	February 4, 2010
DISPOSITION	annulled
PROCEDURAL POSTURE	Petitioner commenced a CPLR article 78 proceeding challenging a prison disciplinary determination after exhausting his administrative appeal. The proceeding was transferred to the Appellate Division, which annulled the determination and directed expungement.
STANDARD OF REVIEW	The court reviewed the prison disciplinary determination in a CPLR article 78 proceeding; the opinion also noted, but did not reach, petitioner's contention that the determination was not supported by substantial evidence.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Diaz v. Fischer

TOPICS

- prisoners rights
- procedural due process
- judicial review of agency action
- administrative law
- remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Hearing Officer violated Diaz's constitutional right to call witnesses by denying testimony from an Inspector General's investigator and a psychologist whose testimony could have been material to his defense.
2. Whether the appropriate remedy for the constitutional denial of witnesses was expungement of the disciplinary determination.

HOLDINGS

1. The Hearing Officer violated Diaz's constitutional right to call witnesses by excluding potentially material testimony from the Inspector General's investigator and the psychologist for reasons unrelated to institutional safety or correctional goals.
2. Expungement was the appropriate remedy because the denial of witness testimony violated Diaz's constitutional right to call witnesses, rather than merely a statutory right.

KEY QUOTATIONS

“Inmates charged with violating prison disciplinary rules have a constitutional right to call witnesses, provided that those witnesses may offer testimony that is material and not redundant, and doing so does not pose a threat to institutional safety or correctional goals” (70 A.D.3d at 1082)

“Inasmuch as these witnesses may have provided testimony that was material, their absence substantially prejudiced petitioner's ability to present his defense and the Hearing Officer denied their testimony for reasons other than institutional safety, we find such denial to be error” (70 A.D.3d at 1083)

FACTUAL BACKGROUND

Diaz was charged with attacking a correction officer without provocation and with related prison disciplinary violations. He claimed instead that the officer had attacked him in retaliation for Diaz's work with the grievance office. At the rehearing, Diaz sought to call an Inspector General's investigator and a psychologist who had examined him shortly after the incident, but the Hearing Officer denied their testimony.

PROCEDURAL HISTORY

Diaz, a prison inmate, was found guilty at a tier III disciplinary hearing of assaulting staff, engaging in violent conduct, interfering with an employee, and disturbing facility order. The initial determination was administratively reversed and a rehearing was ordered, but Diaz was again found guilty and his administrative appeal was unsuccessful. The Appellate Division granted the article 78 petition, annulled the determination, and ordered expungement of all references to the matter from Diaz's institutional record.

DISPOSITION

annulled

REMAND INSTRUCTIONS

Respondent was directed to expunge all references to the disciplinary matter from petitioner's institutional record.

CASES CITED

- Matter of Caldwell v. Goord, 34 A.D.3d 1173, 1174-1175 (2006)
- Matter of Alvarez v. Goord, 30 A.D.3d 118, 119-120 (2006)
- Matter of Reyes v. Goord, 20 A.D.3d 830, 831 (2005)
- Matter of McLean v. Fischer, 63 A.D.3d 1468, 1469 (2009)
- Matter of Vizcaino v. Selsky, 26 A.D.3d 574, 574 (2006), leave denied, 7 N.Y.3d 708 (2006)
- Matter of Antinuche v. Goord, 16 A.D.3d 743, 744 (2005)
- Matter of Rivera v. Selsky, 43 A.D.3d 1210, 1210 (2007)
- Matter of Mendez v. Goord, 21 A.D.3d 1191, 1192 (2005)

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