

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

Gardine v. Annucci

122 A.D.3d 976 (3d Dep't 2014) · Decided November 6, 2014

SUMMARY

The court reviewed a CPLR article 78 proceeding challenging prison disciplinary findings against the petitioner. It annulled the determination because substantial evidence did not support the charges in either misbehavior report and directed that all references to the charges be expunged from the petitioner's institutional record.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Peters, E.J.; Stein, J.; Garry, J.; Egan Jr., J.; Clark, J.
JURISDICTION	New York
DECIDED	November 6, 2014
DISPOSITION	other
PROCEDURAL POSTURE	CPLR article 78 proceeding challenging an administrative determination finding a prison inmate guilty of disciplinary violations; the proceeding was transferred to the Appellate Division by order of the Supreme Court, Albany County.
STANDARD OF REVIEW	Whether the administrative disciplinary determination was supported by substantial evidence.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Gardine v. Annucci, Acting Commissioner of Corrections and Community Supervision

TOPICS

judicial review of agency action

administrative law

standard of review

appellate procedure

civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether substantial evidence supported the determination of guilt on the charges arising from the first misbehavior report.
2. Whether Gardine abandoned his challenge to the charges arising from the second misbehavior report.
3. Whether substantial evidence supported the determination of guilt on the charges arising from the second misbehavior report.

HOLDINGS

1. The determination of guilt arising from the first misbehavior report was not supported by substantial evidence and must be annulled.
2. Gardine did not abandon his challenge to the second misbehavior report.
3. The determination of guilt on the charges arising from the second misbehavior report was not supported by substantial evidence and must be annulled.

KEY QUOTATIONS

“The misbehavior report itself noted petitioner’s professed physical inability to refrain from defecating, and the record is bereft of any allegation or proof that petitioner did so purposefully.” (977)

FACTUAL BACKGROUND

Gardine, a prison inmate, was charged after a February 23, 2013 incident with violating a urinalysis testing rule and refusing a direct order. Several hours later, he told a correction officer that he needed to defecate, said he could not wait, and defecated in his hand after being ordered to wait for the area sergeant. A combined tier III disciplinary hearing found him guilty of all charges, but the record contained no allegation or proof that he intentionally defecated in his hand and noted his claimed physical inability to refrain.

PROCEDURAL HISTORY

Gardine was found guilty after a combined tier III disciplinary hearing of charges arising from two misbehavior reports, and the determination was upheld on administrative appeal. The article 78 proceeding was transferred from the Supreme Court to the Appellate Division. The Appellate Division annulled the determination and directed expungement of all references to the charges from Gardine’s institutional record.

DISPOSITION

other

REMAND INSTRUCTIONS

The determination was annulled, the petition was granted, and the Acting Commissioner of Corrections and Community Supervision was directed to expunge all references to the charges from Gardine's institutional record.

CASES CITED

- Matter of Hinton v Fischer, 108 AD3d 1000, 1001 [2013]
- Matter of Fulton v Chase, 115 AD3d 1033, 1034 [2014]
- Matter of Lopez v Fischer, 115 AD3d 1098, 1099 [2014]

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 respondent Acting Commissioner of Corrections and Community Supervision which found petitioner guilty of violating certain prison disciplinary rules. Petitioner, a prison inmate, was charged in a misbehavior report with a urinalysis testing violation and refusing a direct order as a result of an incident that occurred on February 23, 2013.

Several hours later, petitioner defecated in his hands and *977was charged in a second misbehavior report with refusing a direct order and committing an unhygienic act. He was found guilty as charged following a combined tier III disciplinary hearing, and that determination was upheld on administrative appeal. This CPLR article 78 proceeding ensued. Initially, we conclude, as respondents concede, that substantial evidence does not support the determination of guilt with respect to the first misbehavior report.

Thus, it must be annulled. Turning to the second misbehavior report, after carefully reviewing petitioner's submissions to this Court, we reject respondents' assertion that petitioner abandoned his challenge to the determination of guilt as to the charges contained therein (see Matter of Hinton v Fischer, 108 AD3d 1000, 1001 [2013]).

We also conclude that substantial evidence does not support such determination.* According to the allegations in the second misbehavior report, petitioner told the correction officer that he needed to defecate and the officer stated that the area sergeant would be notified. When petitioner informed the officer that he could not wait any longer, the officer "ordered him to wait until the area [sergeant] arrived," and petitioner proceeded to defecate in his hand.

The misbehavior report itself noted petitioner's professed physical inability to refrain from defecating, and the record is bereft of any allegation or proof that petitioner did so purposefully. Under these particular circumstances, we conclude that the determination finding petitioner guilty of the charges in the second misbehavior report is not supported by substantial evidence and must

also be annulled (see *Matter of Fulton v Chase*, 115 AD3d 1033, 1034 [2014]; compare *Matter of Lopez v Fischer*, 115 AD3d 1098, 1099 [2014]).

Peters, EJ., Stein, Garry, Egan Jr. and Clark, JJ., concur. Adjudged that the determination is annulled, without costs, petition granted, and respondent Acting Commissioner of Corrections and Community Supervision is directed to expunge all references to these charges from petitioner's institutional record.

In lieu of a brief, respondents submitted to this Court a letter in which they limited their arguments regarding the second misbehavior report to the question of whether petitioner has abandoned his claims and did not address whether the finding of guilt as to that misbehavior report was supported by substantial evidence.