

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

Wright v. Fischer

98 A.D.3d 759, 949 N.Y.S.2d 819 (N.Y. App. Div. 2012) · Decided August 2, 2012

SUMMARY

The court confirmed a prison disciplinary determination finding petitioner guilty of assaulting staff, engaging in violent conduct, and creating a disturbance. It held that substantial evidence supported the determination, that credibility issues were for the Hearing Officer, and that any error in denying access to the injured officer's medical records was harmless.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Mercure, J.P.; Lahtinen, J.; Malone Jr., J.; McCarthy, J.; Egan Jr., J.
JURISDICTION	New York
DECIDED	August 2, 2012
DISPOSITION	dismissed
PROCEDURAL POSTURE	CPLR article 78 proceeding seeking review of a prison disciplinary determination; the proceeding was transferred to the Appellate Division by order of Supreme Court, Albany County.
STANDARD OF REVIEW	Whether the administrative determination is supported by substantial evidence; credibility determinations are left to the Hearing Officer, and an evidentiary error warrants reversal only if it was prejudicial.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Wright v. Fischer

TOPICS

judicial review of agency action

agency adjudication

administrative law

civil procedure

PRACTICE AREAS

administrative law

prison disciplinary proceedings

civil procedure

QUESTIONS PRESENTED

1. Whether substantial evidence supported the prison disciplinary determination finding petitioner guilty of assaulting staff, engaging in violent conduct, and creating a disturbance.
2. Whether the Hearing Officer improperly resolved credibility issues against petitioner.
3. Whether denial of petitioner's request for the injured officer's medical records required annulment of the determination.
4. Whether the Hearing Officer was biased or the determination resulted from bias.

HOLDINGS

1. The determination was supported by substantial evidence from the misbehavior report, related documentation, and the involved correction officer's testimony.
2. Petitioner's denial and retaliation claim presented credibility issues for the Hearing Officer to resolve and did not warrant annulment of the determination.
3. Although the Hearing Officer should not have denied petitioner's request for the injured officer's medical records without a showing that disclosure would jeopardize institutional security, the error was harmless and did not require reversal.
4. The record did not indicate that the Hearing Officer was biased or that the determination flowed from alleged bias.

KEY QUOTATIONS

“The misbehavior report and related documentation, together with the testimony of the correction officer who was involved in the altercation, provide substantial evidence supporting the determination of guilt” (759)

“Although the Hearing Officer should not have denied petitioner’s request for the medical records of the officer injured in the assault absent a showing that it would jeopardize institutional security, any such error was harmless in light of the overwhelming evidence presented establishing petitioner’s guilt” (760)

FACTUAL BACKGROUND

After being transferred to a different cell block, petitioner asked a correction officer about the shower schedule. When told that he would need to ask different staff members, petitioner became agitated and struck the officer in the chest, resulting in a physical altercation. He was charged with assaulting staff, engaging in violent conduct, and creating a disturbance, and was found guilty after a tier III disciplinary hearing.

PROCEDURAL HISTORY

Following a tier III disciplinary hearing, petitioner was found guilty of assaulting staff, engaging in violent conduct, and creating a disturbance. The determination was affirmed on administrative appeal. Petitioner then commenced a CPLR article 78 proceeding, which was transferred to the Appellate Division for review.

DISPOSITION

dismissed

CASES CITED

- Matter of Nelson v. Fischer, 93 A.D.3d 1059 (2012)
- Matter of Bridgeforth v. Fischer, 78 A.D.3d 1401, 1401 (2010)
- Matter of White v. Fischer, 87 A.D.3d 1249, 1250 (2011)
- Matter of Jackson v. Dubray, 56 A.D.3d 919 (2008)
- Matter of Jones v. Fischer, 69 A.D.3d 1065, 1066 (2010), leave denied, 16 N.Y.3d 707 (2011)
- Matter of Joseph v. Fischer, 67 A.D.3d 1103, 1104 (2009)
- Matter of Vega v. New York State Department of Correctional Services, 92 A.D.3d 991, 992 (2012)
- Matter of Kalwasinski v. Bezio, 80 A.D.3d 1068, 1069 (2011)

OPINION

Wright v. Fischer 98 A.D.3d 759

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 Commissioner of Corrections and Community Supervision which found petitioner guilty of violating certain prison disciplinary rules. Following his transfer to a different cell block, petitioner asked a correction officer about the shower schedule. After being informed that he would have to inquire with different staff members, petitioner became agitated and struck the officer in the chest. A physical altercation ensued. Petitioner was charged in a misbehavior report with assaulting staff, engaging in violent conduct and creating a disturbance. He was found guilty of the charges following a tier III disciplinary hearing and the determination was affirmed on administrative appeal. This CPLR article 78 proceeding ensued. We confirm. The misbehavior report and related documentation, together with the testimony of the correction officer who was involved in the altercation, provide substantial evidence supporting the determination of guilt (see Matter of Nelson v Fischer, 93 AD3d 1059 [2012]; Matter of Bridgeforth v Fischer, 78 AD3d 1401, 1401 [2010]). Petitioner's denial of the charges and claim that the misbehavior report was written in retaliation for a prior grievance presented a credibility issue for the Hearing Officer to resolve (see Matter of White v Fischer, 87 AD3d 1249, 1250 [2011]; Matter of Jackson v Dubray, 56 AD3d 919 [2008]). Although the Hearing Officer should not have denied petitioner's request for the medical records of the officer injured in the assault absent a showing that it would jeopardize *760institutional security, any such error was harmless in light of the overwhelming evidence presented establishing petitioner's guilt (see Matter of Jones v Fischer, 69 AD3d 1065, 1066 [2010], lv denied 16 NY3d 707 [2011]; Matter of Joseph v Fischer, 67 AD3d 1103, 1104 [2009]). Furthermore, upon reviewing the record, we do not find any indication that the Hearing Officer was biased or that the determination flowed

from any alleged bias (see *Matter of Vega v New York State Dept. of Correctional Servs.*, 92 AD3d 991, 992 [2012]; *Matter of Kalwasinski v Bezio*, 80 AD3d 1068, 1069 [2011]). Petitioner's remaining contentions are either unpreserved for our review or are lacking in merit. Mercure, J.P., Lahtinen, Malone Jr., McCarthy and Egan Jr., JJ., concur. Adjudged that the determination is confirmed, without costs, and petition dismissed.