

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

Linares v. Fischer

119 A.D.3d 1300, 989 N.Y.S.2d 703 (N.Y. App. Div. 2014) · Decided July 31, 2014

SUMMARY

The court reviewed a prison disciplinary determination under CPLR article 78. It annulled the finding that the petitioner violated package room procedures for lack of substantial evidence, directed expungement of that charge, and otherwise upheld the findings of smuggling and engaging in an unauthorized exchange.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York
WRITING FOR THE COURT	Peters, R.J.; Stein, J.; Garry, J.; Egan Jr., J.; Clark, J.
JURISDICTION	New York
DECIDED	July 31, 2014
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner commenced a CPLR article 78 proceeding to review a prison disciplinary determination. The proceeding was transferred to the Appellate Division by order of the Supreme Court, Albany County.
STANDARD OF REVIEW	Whether the administrative disciplinary determination is supported by substantial evidence and whether the hearing officer was biased.
PRECEDENTIAL VALUE	published
PARTIES	Linares v. Fischer

TOPICS

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

PRACTICE AREAS

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

QUESTIONS PRESENTED

- Whether substantial evidence supported petitioner's guilt of violating package room procedures.

2. Whether substantial evidence supported petitioner's guilt of smuggling and engaging in an unauthorized exchange.
3. Whether the hearing officer was biased such that the disciplinary determination should be disturbed.
4. Whether the penalty required reassessment after one charge was annulled.

HOLDINGS

1. The determination finding petitioner guilty of violating package room procedures was not supported by substantial evidence and was annulled to that extent.
2. The matter did not need to be remitted for reassessment of the penalty because no loss of good time was imposed and petitioner had already served the penalty.
3. The determination was supported by substantial evidence with respect to the charges of smuggling and engaging in an unauthorized exchange.
4. The court found no basis to disturb the determination on the ground that the hearing officer was biased.

FACTUAL BACKGROUND

Correction officials discovered that petitioner had received a package and had given some of its contents to another inmate. The items were found in the other inmate's locker, and the package had been sent to petitioner by the other inmate's mother. Petitioner admitted receiving the package and giving part of its contents to the inmate for temporary storage.

PROCEDURAL HISTORY

Petitioner was found guilty at a tier III disciplinary hearing of engaging in an unauthorized exchange, smuggling, and violating package room procedures. The determination was affirmed on administrative appeal. In the article 78 proceeding, respondent conceded that the package-room-procedures charge was unsupported by substantial evidence, while the court upheld the remaining charges.

DISPOSITION

affirmed

CASES CITED

- Matter of Madden v Griffin, 109 A.D.3d 1060, 1061 (2013), lv denied 22 N.Y.3d 860 (2014)
- Matter of Hinton v Fischer, 108 A.D.3d 1000, 1001 (2013)
- Matter of Cruz v Walsh, 87 A.D.3d 1234, 1234-1235 (2011)
- Matter of Mendez v Goord, 21 A.D.3d 1191, 1191-1192 (2005)
- Matter of Miller v Portuondo, 269 A.D.2d 646, 646 (2000)
- Matter of Guillory v Fischer, 111 A.D.3d 1005, 1005-1006 (2013)
- Matter of Fero v Prack, 108 A.D.3d 1004, 1005 (2013)

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 which found petitioner guilty of violating certain prison disciplinary rules. *1301 Correction officials discovered that petitioner received a package and had given some of its contents to another inmate.

They found such items in the locker belonging to the other inmate and learned that the package had been sent to petitioner by the other inmate's mother. As a result, petitioner was charged in a misbehavior report with engaging in an unauthorized exchange, smuggling and violating package room procedures. 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. Initially, respondent concedes and we agree that the determination finding petitioner guilty of violating package room procedures is not supported by substantial evidence. Although the determination must be annulled to this extent, the matter need not be remitted for a reassessment of the penalty given that no loss of good time was imposed and petitioner has already served the penalty (see *Matter of Madden v Griffin*, 109 AD3d 1060, 1061 [2013], lv denied 22 NY3d 860 [2014]; *Matter of Hinton v Fischer*, 108 AD3d 1000, 1001 [2013]).

We find no reason to disturb the determination with respect to the remaining charges. Petitioner admitted that he received a package from another inmate's mother and gave a portion of the contents to the inmate to keep in his locker until petitioner had room in his own. His testimony was consistent with the testimony of the other inmate, the inmate's mother and the sergeant who wrote the misbehavior report, all of which, together with the detailed misbehavior report, provide substantial evidence supporting petitioner's guilt of the charges of smuggling and engaging in an unauthorized exchange (see *Matter of Cruz v Walsh*, 87 AD3d 1234, 1234-1235 [2011]; *Matter of Mendez v Goord*, 21 AD3d 1191, 1191-1192 [2005]; *Matter of Miller v Portuondo*, 269 AD2d 646, 646 [2000]).

Contrary to petitioner's claim, we find nothing to indicate that the Hearing Officer was biased or that the determination flowed from any alleged bias (see *Matter of Guillory v Fischer*, 111 AD3d 1005, 1005-1006 [2013]; *Matter of Fero v Prack*, 108 AD3d 1004, 1005 [2013]). Petitioner's remaining contentions are either unpreserved or without merit. Peters, RJ., Stein, Garry, Egan Jr. and Clark, JJ., concur.

Adjudged that the determination is modified, without costs, by annulling so much thereof as found petitioner guilty of violating package room procedures; petition granted to that extent and respondent is directed to expunge all references to this charge from petitioner's institutional record; and, as so modified, confirmed.

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