

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

Parkinson v. Selsky

49 A.D.3d 985 (N.Y. App. Div. 2008) · Decided March 13, 2008

SUMMARY

The New York Appellate Division reviewed a prison disciplinary determination finding that the petitioner assaulted correction officers and resisted their control. The court held that substantial evidence supported the determination and rejected challenges concerning witness testimony, hearing restrictions, the incomplete transcript, inadequate assistance, and Hearing Officer bias, confirming the determination and dismissing the petition.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Kane, J.; Cardona, P.J.; Carpinello, J.; Lahtinen, J.; Kavanagh, J.
JURISDICTION	New York
DECIDED	March 13, 2008
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner sought appellate review of an administrative prison disciplinary determination finding that he assaulted correction officers and engaged in related misconduct.
STANDARD OF REVIEW	The court reviewed whether substantial evidence supported the disciplinary determination and whether the Hearing Officer abused his discretion or otherwise deprived petitioner of a fair hearing.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Parkinson v. Selsky

TOPICS

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

PRACTICE AREAS

- New York prison disciplinary proceedings
- administrative law
- appellate procedure
- evidence
- civil rights

QUESTIONS PRESENTED

1. Whether substantial evidence supported the finding that petitioner committed the charged assaults and related misconduct.
2. Whether the Hearing Officer improperly limited, denied, or conducted witness testimony.
3. Whether the missing portion of the hearing transcript deprived petitioner of meaningful appellate review.
4. Whether inadequate prehearing assistance required reversal despite later corrective measures.
5. Whether the Hearing Officer was biased or the determination was otherwise improperly motivated.

HOLDINGS

1. The disciplinary determination was supported by substantial evidence, including the misbehavior report, unusual incident reports, and correction-officer testimony.
2. The Hearing Officer did not abuse his discretion by refusing cumulative, irrelevant, or impeachment-only testimony, or by limiting further testimony after hearing or seeking testimony from nearly 30 witnesses.
3. The Hearing Officer properly took the inmate's testimony outside petitioner's presence to preserve institutional safety.
4. The missing portion of the transcript did not require reversal because the record remained sufficient for meaningful appellate review.
5. Any initial inadequacy in assistance did not warrant reversal because the Hearing Officer remedied it by providing the requested documents, excluding only nonexistent or irrelevant materials, and granting additional review time.
6. The record did not establish Hearing Officer bias or that the determination resulted from anything other than the evidence of petitioner's guilt.

FACTUAL BACKGROUND

The misbehavior report, unusual incident reports, and testimony from numerous correction officers indicated that Parkinson struck two correction officers, attempted to strike one officer again, and wrestled with officers while resisting control. Parkinson and two inmate witnesses gave a contrary account, creating a credibility issue for the Hearing Officer. The Hearing Officer limited or denied additional witness testimony, took one inmate's testimony outside Parkinson's presence for institutional safety, and later supplied documents and additional review time after an initial deficiency in assistance. Part of the hearing transcript was inadvertently recorded over, but the missing testimony was substantially repeated later in the hearing.

PROCEDURAL HISTORY

A prison Hearing Officer sustained the charged misconduct after a disciplinary hearing. Parkinson challenged the determination on evidentiary, witness, hearing-transcript, assistance, and bias grounds. The Appellate Division confirmed the determination and dismissed the petition.

DISPOSITION

dismissed

CASES CITED

- Matter of Williams v. Goord, 36 A.D.3d 1033, 1033 (N.Y. App. Div. 2007)
- Matter of Barnes v. Goord, 279 A.D.2d 685, 685 (N.Y. App. Div. 2001)
- Matter of Moore v. Senkowski, 13 A.D.3d 683, 684 (N.Y. App. Div. 2004)
- Matter of Pica v. Selsky, 274 A.D.2d 712, 713 (N.Y. App. Div. 2000)
- Matter of Thomas v. Goord, 293 A.D.2d 787, 788 (N.Y. App. Div. 2002)
- Matter of Gill v. Selsky, 240 A.D.2d 831, 831 (N.Y. App. Div. 1997)
- Matter of Fama v. Mann, 196 A.D.2d 919, 920 (N.Y. App. Div. 1993)
- Matter of Muhammad v. Selsky, 279 A.D.2d 742, 743 (N.Y. App. Div. 2001)
- Matter of Lebron v. McGinnis, 26 A.D.3d 658, 658-659 (N.Y. App. Div. 2006)
- Matter of Hynes v. Goord, 30 A.D.3d 652, 653 (N.Y. App. Div. 2006)
- Matter of Parker v. Laundree, 234 A.D.2d 727, 728 (N.Y. App. Div. 1996)
- Matter of Moss v. Goord, 36 A.D.3d 977, 978 (N.Y. App. Div. 2007)
- Matter of De La Cruz v. Selsky, 36 A.D.3d 907, 907 (N.Y. App. Div. 2007)
- Matter of Tumminia v. Goord, 294 A.D.2d 727, 728 (N.Y. App. Div. 2002)
- Matter of Rossi v. Portuondo, 277 A.D.2d 615, 616 (N.Y. App. Div. 2000)