

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

Smith v. Prack

100 A.D.3d 1126, 953 N.Y.S.2d 392 (3d Dep't 2012) · Decided November 8, 2012

SUMMARY

The New York Appellate Division, Third Department annulled a prison disciplinary determination finding the petitioner guilty of making a false statement and counterfeiting a document. The court held that substantial evidence did not link the petitioner to the final packet containing the allegedly false information and directed that all references to the determination be expunged from his institutional record.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Rose, J.; Peters, P.J.; Malone Jr., J.; Stein, J.; Egan Jr., J.
JURISDICTION	New York
DECIDED	November 8, 2012
DISPOSITION	other
PROCEDURAL POSTURE	CPLR article 78 proceeding challenging 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 disciplinary determination was supported by substantial evidence.
PRECEDENTIAL VALUE	Published New York Appellate Division decision; precedential.
PARTIES	Smith v. Prack, Commissioner of Corrections and Community Supervision

TOPICS

judicial review of agency action

agency adjudication

administrative law

evidence

PRACTICE AREAS

administrative law

prison disciplinary proceedings

evidence

QUESTIONS PRESENTED

1. Whether substantial evidence supported the determination that petitioner violated prison disciplinary rules prohibiting making a false statement and counterfeiting a document.
2. Whether the disciplinary determination should be annulled and references to it expunged from petitioner's institutional record.

HOLDINGS

1. The determination finding petitioner guilty of making a false statement and counterfeiting a document was not supported by substantial evidence because the record did not link him to the final packet submitted to the facility.
2. Because the determination of guilt was annulled, all references to it had to be expunged from petitioner's institutional record.

KEY QUOTATIONS

“Inasmuch as none of the evidence, including the confidential proof concerning events on January 12, 2011, links petitioner to the final report submitted to the facility on or immediately after December 16, 2010, when petitioner was keeplocked, we conclude that, under the circumstances, the determination of guilt must be annulled and all references thereto expunged from petitioner’s institutional record.” (100 A.D.3d at 1127)

FACTUAL BACKGROUND

Petitioner, a chaplain's aide, prepared a special event packet containing false information about the keeplock and special housing unit status of inmates. The evidence showed that a final packet had been returned to the deacon and submitted to the facility on or about December 16, 2010, while petitioner was on keeplock status and could not have returned it. The deacon also testified that other inmates had access to the computer used to prepare the packet. The record, including confidential proof, did not link petitioner to the final packet submitted to the facility.

PROCEDURAL HISTORY

After a tier III disciplinary hearing, petitioner was found guilty of violating prison rules prohibiting making a false statement and counterfeiting a document. His administrative appeal was unsuccessful. He commenced a CPLR article 78 proceeding, which was transferred to the Appellate Division for review. The Appellate Division annulled the determination and directed expungement of all references to it from petitioner's institutional record.

DISPOSITION

other

REMAND INSTRUCTIONS

The Commissioner of Corrections and Community Supervision was directed to expunge all references to the annulled determination from petitioner's institutional record. No remand was expressly ordered.

CASES CITED

- Matter of France v. Bezio, 78 A.D.3d 1352, 1353 (2010)
- Matter of Gibson v. Fischer, 54 A.D.3d 1086 (2008)

OPINION

ROSE, J.

Rose, J. Proceeding pursuant to CPLR article 78 (transferred *1127 to this Court by order of the Supreme Court, entered in Albany County) to review a determination of the Commissioner of Corrections and Community Supervision which found petitioner guilty of violating certain prison disciplinary rules. Petitioner commenced this CPLR article 78 proceeding challenging a determination finding him guilty, after a tier III hearing, of violating the prison disciplinary rules that prohibit making a false statement and counterfeiting a document.

According to the misbehavior report, dated January 4, 2011, petitioner, in his capacity as a chaplain's aide, prepared a special event packet for a January 7, 2011 holiday celebration that contained false information about the keeplock and special housing unit status of various inmates named on the list.

The author of the report testified that such false information, if undetected, could have allowed the listed inmates to improperly obtain trays of food. Following the determination of guilt, petitioner pursued an unsuccessful administrative appeal. Petitioner maintains that the determination of guilt was not supported by substantial evidence and, upon our review of the record, we agree.

Notably, the hearing proof established that, while petitioner originally submitted a packet to the deacon for the purpose of submitting it to the facility, the deacon gave it back to him for revisions unrelated to the subject charges.* The deacon testified that a final packet was given back to him on or just prior to December 16, 2010, at which point it was immediately submitted to the facility for processing.

The deacon acknowledged that it could not have been petitioner who gave the final packet back to him inasmuch as it is undisputed that petitioner was on keeplock status from approximately December 10, 2010 until December 24, 2010. Significantly, the deacon's testimony also established that petitioner was not the only inmate with access to the computer where the packet was prepared.

Inasmuch as none of the evidence, including the confidential proof concerning events on January 12, 2011, links petitioner to the final report submitted to the facility on or immediately after December 16, 2010, when petitioner was keeplocked, we conclude that, under the circumstances, the determination of guilt must be annulled and all references thereto expunged from petitioner's

institutional record (see *Matter of France v Bezio*, 78 AD3d 1352, 1353 [2010]; *Matter of Gibson v Fischer*, 54 AD3d 1086 [2008]).

Given this result, it is unnecessary to reach petitioner's remaining arguments. *1128Peters, P.J., Malone Jr., Stein and Egan Jr., JJ., concur. Adjudged that the determination is annulled, without costs, petition granted and the Commissioner of Corrections and Community Services is directed to expunge all references thereto from petitioner's institutional record.

Although petitioner requested a copy of the original packet he submitted to the deacon so that it could be compared to the final one, it could not be produced.