

NEW YORK COURT OF APPEALS

In the Matter of Anthony Bottom v. Anthony Annucci

26 N.Y.3d 983 (2015) · No. No. 135 · Decided October 22, 2015

SUMMARY

The New York Court of Appeals affirmed a judgment upholding a prison disciplinary determination that Anthony Bottom violated a DOCCS rule by possessing loose postage stamps in connection with a law-library visit. The court held that substantial evidence supported the determination, that Bottom's constitutional challenge to the facility rule was unpreserved, and that his lack of intent was irrelevant under the applicable rules.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Chief Judge Lippman; Judge Pigott; Judge Rivera; Judge Abdus-Salaam; Judge Stein; Judge Fahey
JURISDICTION	New York
DECIDED	October 22, 2015
DOCKET	No. 135
DISPOSITION	affirmed
PROCEDURAL POSTURE	Article 78 proceeding challenging a prison disciplinary determination; the Court of Appeals reviewed the Appellate Division judgment confirming the determination.
STANDARD OF REVIEW	Whether the prison disciplinary determination is supported by substantial evidence.
PRECEDENTIAL VALUE	published New York Court of Appeals memorandum decision
PARTIES	Anthony Bottom v. Anthony Annucci, Acting Commissioner of the Department of Corrections and Community Supervision

TOPICS

agency adjudication judicial review of agency action standard of review preservation of error
administrative law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether substantial evidence supported the disciplinary determination that Bottom violated an enforceable prison rule.
2. Whether Bottom's challenge to the enforceability of the facility provision under Article IV, § 8 of the New York Constitution was preserved for appellate review.
3. Whether possession of the loose stamps outside the library and lack of intent defeated the finding that Bottom violated, or attempted to violate, the facility provision and DOCCS Rule 113.22.

HOLDINGS

1. The disciplinary determination was supported by substantial evidence.
2. Bottom's claim that the facility provision was unenforceable because it had not been filed with the Secretary of State was not preserved for appellate review.
3. Bottom violated, or at least attempted to violate, the facility provision and was punishable under DOCCS Rule 113.22 notwithstanding that he was found outside the library and claimed his conduct was unintentional.

KEY QUOTATIONS

"Substantial evidence "means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact"" (26 N.Y.3d at 984)

FACTUAL BACKGROUND

While incarcerated at Attica Correctional Facility, Bottom was frisked during a library call-out and found carrying two loose United States postage stamps. Attica prohibited loose stamps in the law library, and Bottom admitted at the Tier III disciplinary hearing that he possessed the stamps and was carrying them while traveling to the law library. He also admitted that the restriction appeared in the inmate handbook, although he claimed he was unaware of it when the incident occurred.

PROCEDURAL HISTORY

A DOCCS disciplinary hearing found Anthony Bottom guilty of violating DOCCS Rule 113.22 after he possessed two loose postage stamps in violation of an Attica Correctional Facility law-library provision. The Appellate Division confirmed the disciplinary determination. The Court of Appeals affirmed the Appellate Division judgment without costs.

DISPOSITION

affirmed

CASES CITED

- People ex rel. Vega v. Smith, 66 N.Y.2d 130, 139 (1985)
- 300 Gramatan Ave. Assoc. v. State Division of Human Rights, 45 N.Y.2d 176, 180 (1978)
- Matter of Barbara C., 64 N.Y.2d 866, 868 (1985)
- Rosa v. Fischer, 87 A.D.3d 1252, 1253 (3d Dep't 2011), leave denied, 19 N.Y.3d 802 (2012)
- Mingo v. Annucci, 49 A.D.3d 1106, 1107 (3d Dep't 2008), leave denied, 11 N.Y.3d 707 (2008)
- Matter of Khan v. New York State Department of Health, 96 N.Y.2d 879 (2001)
- Matter of Bryant v. Coughlin, 77 N.Y.2d 642, 647 (1991)

OPINION

PER CURIAM.

This memorandum is uncorrected and subject to revision before publication in the New York Reports. No. 135 In the Matter of Anthony Bottom, Appellant, v. Anthony Annucci, &c., Respondent. Norman P. Effman, for appellant. Allyson B. Levine, for respondent. MEMORANDUM: The judgment of the Appellate Division should be affirmed, without costs. Petitioner Anthony Bottom appeals from a judgment confirming a disciplinary determination of respondent, the Acting - 1 - - 2 - No. 135 Commissioner of the Department of Corrections and Community Supervision (DOCCS), that petitioner violated DOCCS Rule 113.22.

That rule states, "[a]n inmate shall not use or possess an article in an area where its use or possession [is] prohibited" (7 NYCRR 270.2 [b] [14] [xii]). Our review of petitioner's challenge is limited to determining whether the prison disciplinary determination is supported by substantial evidence (CPLR 7803 [4]; People ex rel. Vega v Smith, 66 NY2d 130, 139 [1985]).

Substantial evidence "means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact" (id. at 139, quoting 300 Gramatan Ave. Assoc. v State Div. of Human Rights, 45 NY2d 176, 180 [1978]).

Here, the administrative record establishes that while petitioner was an inmate at Attica Correctional Facility, he was subjected to a routine frisk as a part of a library call-out, during which he was found to be in possession of two, loose United States postage stamps, in direct violation of the Attica facility provision prohibiting loose stamps in the law library.

At the Tier III disciplinary hearing, petitioner conceded the facts as charged, including that he was in possession of the stamps. Although he claimed he was unaware of the facility provision at the time of the incident, he admitted that the provision was set forth in the Attica inmate handbook.

On its face, the record provides substantial evidence of respondent's determination. - 2 - - 3 - No. 135 Nonetheless, petitioner contends that the determination is not supported by substantial evidence that he violated an enforceable rule.

As a threshold matter, petitioner has not preserved for our consideration his claim that the facility provision is unenforceable because, at the time of the incident, it had not been filed with the Secretary of State, as required by Article IV, § 8 of the New York State constitution (NY Const art. IV, § 8 ["No rule or regulation made by any state department, board, bureau, officer, authority or commission, except such as relates to the organization or internal management of a state department, board, bureau, authority or commission shall be effective until it is filed in the office of the department of state"]).

Petitioner admits that he failed to raise the constitutionality of the provision during the administrative proceedings and in his Article 78 petition. Thus, his claim is not properly before us (see *Matter of Barbara C.*, 64 NY2d 866, 868 [1985] [dismissing appeal where the constitutional questions raised on appeal were not raised or preserved in the trial court]; *Rosa v Fischer*, 87 AD3d 1252, 1253 [3d Dept 2011] [claim, not raised in an article 78 petition, was unpreserved], lv denied 19 NY3d 802 [2012]; *Mingo v Annucci*, 49 AD3d 1106, 1107 [3d Dept 2008] [claim raised for the first time on appeal was unpreserved] lv denied 11 NY3d 707 [2008]; see also *Matter of Khan v New York State Dept. of Health*, 96 NY2d 879 [2001] [stating that in the article 78 context, the Appellate Division's power of review is - 3 - - 4 - No. 135 the same as the Court of Appeals]).

Petitioner's preserved claims that, in fact, he did not violate the facility provision because he was found to be in possession of the loose stamps outside the library premises, and that any mistake on his part was unintentional, are without merit. Prison rules state explicitly that inmates who attempt "to violate institutional rules of conduct... [are] punishable to the same degree as violators of such rules.... [and] may be cited for attempts... whether or not the text of an actual rule contains such term[]" (7 NYCRR 270.3 [b]).

Petitioner testified during the disciplinary hearing that he was carrying the loose stamps while on his way to the law library. Thus, by his own admission, he is guilty of an attempt to violate the provision, and as a consequence Rule 113.22. Furthermore, whether petitioner was aware that he was in violation of a restriction on loose stamps is irrelevant because Rule 113.22 applies regardless of the inmate's intent.

The Appellate Division order should be affirmed because substantial evidence supports respondent's disciplinary determination that petitioner violated an enforceable prison rule, based on the misbehavior report, petitioner's admissions, and the Attica law library provision (see *People ex rel. Vega*, 66 NY2d at 139; *Matter of Bryant v Coughlin*, 77 NY2d 642, 647 [1991]). - 4 - - 5 - No. 135 * * * * * Judgment affirmed, without costs, in a memorandum.

Chief Judge Lippman and Judges Pigott, Rivera, Abdus-Salaam, Stein and Fahey concur. Decided October 22, 2015 - 5 -

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