

STATE OF MICHIGAN
COURT OF APPEALS

RAY A. GONZALES-EL,

Petitioner-Appellant,

v

MICHIGAN DEPARTMENT OF
CORRECTIONS,

Respondent-Appellee.

UNPUBLISHED

March 12, 2002

No. 227227

Ingham Circuit Court

LC No. 98-089523-AA

Before: Meter, P.J., and Markey and Owens, JJ.

PER CURIAM.

Petitioner appeals as of right from a trial court order denying his motion for summary disposition and granting respondent's request to dismiss his petition as a matter of law. We affirm.

Following an administrative hearing determining that petitioner engaged in prohibited conduct, respondent labeled petitioner a "homosexual predator" without holding a second administrative hearing. Petitioner filed a petition for declaratory judgment alleging that respondent's failure to hold a second administrative hearing violated his federal and state due process rights, and requesting the immediate removal of the "homosexual predator" label from his file. Specifically, the petition alleged that respondent (i) failed to hold the requisite administrative hearing pursuant to MCL 791.251(2); and (ii) failed to make a determination that the "confidential informant" was both reliable and credible before labeling him a "homosexual predator." The trial court disagreed, concluding that petitioner was not entitled to relief as a matter of law.

Petitioner contends that the trial court erred by denying his motion for summary disposition and dismissing his petition. We review de novo conclusions of law. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

Petitioner correctly notes that MCL 791.251(2)(c) requires an administrative hearing before a prisoner can be labeled a "homosexual predator." *Gee v Department of Corrections*, 235 Mich App 291, 298; 597 NW2d 223 (1999). However, the *Gee* panel recognized that, where a prisoner has already received one administrative hearing to determine whether he or she engaged in prohibited conduct, a second hearing to determine the propriety of the "homosexual predator" label, resulting from a finding that the prisoner engaged in the prohibited conduct,

would not necessarily be mandated by MCL 791.251(2)(c). *Id.* at 298-300. Here, petitioner does not contend that he did not receive a proper administrative hearing where it was found that he engaged in a “major misconduct.” Indeed, during the major misconduct hearing, petitioner was able to present his contention that the purported victim was lying. The hearing examiner, however, concluded that the victim was more persuasive and convincing, gave specific details, and appeared sincere. While petitioner may disagree with the hearing examiner’s findings, this is not tantamount to a deprivation of due process. Rather, petitioner received the hearing that he was entitled to pursuant to MCL 791.251(2). Thus, as in *Gee*, respondent did not violate MCL 791.251(2) by labeling petitioner a “homosexual predator” without holding a second administrative hearing. *Id.* Therefore, we do not believe that the trial court erred as a matter of law by ruling that petitioner was not entitled to relief on this ground.

Petitioner also contends that respondent was required to make a determination that the victim was “credible” and “reliable” before labeling petitioner a “homosexual predator.” We disagree. Petitioner’s description of the victim as a “confidential informant” is misplaced. Both petitioner and the hearing examiner were well aware of the victim’s identity. Moreover, the concept of a “confidential informant” is relevant to a magistrate’s review of a request for a search warrant, not to the general fact-finding process in a hearing, and petitioner has presented no authority to the contrary. Indeed, the unique concerns presented in a search warrant context, where the magistrate does not have an opportunity to personally assess the informant, are not present in an administrative hearing because the hearing examiner may examine the complainant and the accused. Further, the concepts of credibility and reliability are part of the general fact-finding process undertaken by the hearing examiner, even if independent conclusions regarding each variable are not expressly stated. Thus, we do not believe that petitioner was deprived of due process by respondent’s failure to make an independent assessment of the victim’s credibility or reliability during the administrative hearing. Consequently, we conclude that the trial court did not err by ruling that petitioner was not entitled, as a matter of law, to the relief he requested or by dismissing his case.

Affirmed.

/s/ Patrick M. Meter
/s/ Jane E. Markey
/s/ Donald S. Owens