Matter of Williams v Fischer
2013 NY Slip Op 32285(U)
September 25, 2013
Sup Ct, St. Lawrence County
Docket Number: 141038
Judge: S. Peter Feldstein

[* 1]

STATE OF NEW YORK
SUPREME COURT **COUNTY OF ST. LAWRENCE**

- **X**

In the Matter of the Application of
RANDY WILLIAMS,#01-B-0247,

Petitioner,

for Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

DECISION AND JUDGMENT
RJI #44-1-2013-0255.13
INDEX #141038
ORI # NY044015J

BRIAN FISCHER, Commissioner,
NYS Department of Corrections and
Community Supervision,

Respondent.

- **X**

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Randy Williams, verified on March 30, 2013 and filed in the St. Lawrence County Clerk's office on April 9, 2013. Petitioner, who is an inmate at the Washington Correctional Facility, is challenging the results of a Tier III Superintendent's Hearing held at the Riverview Correctional Facility and concluded on December 28, 2012. The Court issued an Order to Show Cause on April 16, 2013 and has received and reviewed respondent's Answer and Return, verified on June 7, 2013, as well as petitioner's Letter Reply thereto, dated June 14, 2013 and filed in the St. Lawrence County Clerk's office on June 20, 2013.

As the result of an incident that occurred at the Riverview Correctional Facility on December 13, 2012 petitioner was issued an inmate misbehavior report charging him with violations of inmate rules 107.11 (harassment), 107.20 (lying/false information), 111.10 (impersonation) and 116.12 (inmate will not alter, forge or counterfeit any documents).

The inmate misbehavior report, authored by Correction Sergeant Bell, alleged, in relevant part, as follows:

> "On 12-12-12 I (Sgt. D. Bell) was assigned to investigate Grievance #RV-10548 per Capt. R. Adams. According to the documentation I received Grievance #RV-10548 had been submitted by inmate DiRenzo . . . [I]nmate DiRenzo alleged that he had been physically assaulted by a staff member and it is procedure that the inmate be examined by facility medical staff whenever an allegation of this nature is claimed. I contacted the H.U. Officer to have inmate DiRenzo report to the Sgt.'s Office to arrange for a medical examination and then conduct an interview in reference to the above grievance. The H.U. Officer advised me that inmate DiRenzo was in the draft area preparing to be paroled. I then reported to the draft area and interviewed inmate DiRenzo. [I]nmate DiRenzo stated to me that he did not file the above grievance, the incidents alleged never occurred and that it was not his hand writing. [I]nmate DiRenzo then documented his statement and was examined by facility medical staff with no injuries being noted. . . . I then continued my investigation into the above fraudulent grievance and determined that Inmate Williams, R. [petitioner] . . . (I.G.R.C. clerk) had in fact written the above fraudulent grievance. This determination was derived by reviewing hand writing samples of inmate Williams. Upon interviewing inmate Williams he initially denied writing and filing the above grievance and when presented with the evidence I had obtained subsequently admitted to writing and filing Grievance #RV-10548 and using inmate DiRenzo's information as the grievant. [I]nmate Williams stated he wanted to initiate a complaint against the staff member named in the above fraudulent grievance in an attempt to get the staff member in trouble and discredit the staff member and thought that the above fraudulent grievance would not be investigated until after inmate DiRenzo was released to parole. [I]nmate Williams stated as the I.G.R.C. clerk he had direct access to write and file a fraudulent and false grievance using other imate[']s information."

A Tier III Superintendent's Hearing was commenced at the Riverview Correctional Facility on December 19, 2012. At the conclusion of the hearing, on December 28, 2012, petitioner was found guilty of all four charges and a disposition was imposed confining him to the special housing unit for 120 days, directing the loss of various privileges for a like period of time and recommending the loss of 2 months of good time. Upon

administrative appeal the results of the Tier III Superintendent's Hearing concluded on December 28, 2012 were affirmed. This proceeding ensued.

Petitioner advances several arguments in support of his ultimate contention that the results and disposition of the Tier III Superintendent's Hearing concluded on December 28, 2012 must be overturned. The Court has serious concerns with respect to one of such arguments. Citing *Hodges v. Scully*, 141 AD2d 729, petitioner asserts that his due process/regulatory rights were violated inasmuch as a presiding hearing officer demonstrated bias and partiality. According to petitioner, the " . . . hearing officer had a disposition rendered before the hearing was concluded and all evidence and testimony was in."

The Superintendent's Hearing that is the subject of this proceeding took place over the course of three days - December 19, 2012, December 27, 2012 and December 28, 2012. A review of the hearing transcript reveals that on December 28, 2012 petitioner made the following statement: "I wanted to state my objection from yesterday. Yesterday when I came in the room I noticed that the disposition form was already filled out. There wasn't, no time, a log time ma'am so (inaudible) but the disposition was already filled out. So I take it that there is already an intent that you was gonna find me guilty anyway without all the documentation before Direnzo's testimony." The presiding hearing officer immediately responded as follows: "Oh, let me clarify I do this with all my hearings. I try to fully prepare as much as I can before I come down here. Unless I have indicated um a penalty term and a description I've not indicated guilt or non guilt on any of your charges I just try to come down prepared. If I decide that you are not guilty I'm able to it's a slash of a pen mark and nothing is going to be completed. So I am just trying to get

ready in preparation and it saves me a few seconds and to make sure I have everything you know written ahead of time. I'm not saying that you're guilty before the end of the hearing. I needed to further investigate this but please continue."

Based upon the above-quoted exchange between the petitioner and hearing officer it seems clear that the hearing officer filed in some portion or portions of the "SUPERINTENDENT HEARING DISPOSITION RENDERED" sheet prior to the close of testimony. That document, the Court notes, is a computer-generated form with certain background information (including the inmate's name, the date of the underlying incident, the review date and the description of charges) pre-printed out. Other portions of the computer-generated form are blank and must be filled in by the presiding hearing officer. In reviewing the disposition sheet the Court finds that few portions of the form can be filled in by the hearing officer prior to the completion of the hearing without betraying potential bias with respect to the ultimate disposition. Obviously the tape number, delivery date of the inmate misbehavior report and hearing starting date and time could properly be filled in by the hearing officer at any time. The "HEARING END DATE & TIME," although not impacting on the issue of guilt or innocence, could obviously not be known until the hearing was completed. Most of the remainder of the blanks to be filled in, however, relate to the ultimate determination of guilt or innocence and therefore cannot properly be completed by the hearing officer until all testimony and documentary evidence have been received and the hearing is adjourned for disposition. Thus the "DISPOSITION" portion of the form, which the hearing officer fills in by simply designating guilty or not guilty with respect to each charge, could not properly be completed prior to the close of the hearing. In addition, the dispositional penalty

"DESCRIPTION," as well as the penalty term and start/release dates could not be properly filled in prior to the close of the hearing. Finally, on the second page of the "SUPERINTENDENT'S HEARING DISPOSITION RENDERED" form spaces are left for the hearing officer to fill in the "STATEMENT OF EVIDENCE RELIED UPON," "REASONS FOR DISPOSITION" and "SPECIAL INSTRUCTION ON CORRESPONDENCE RESTRICTIONS AND REFERRALS." Obviously these spaces could also not be properly filled in prior to the close of the hearing.

In the case at bar the "STATEMENT OF EVIDENCE RELIED UPON" was completed in the handwriting of the hearing officer as follows: "The verbal + written testimony of Sgt. Bell + Captain Adams, which I find creditable, confidential testimony from an OMH clinician was obtained to evaluate your [petitioner's] mental health status at the time of the incident + time of this hearing; an extension was granted because you were assigned to the OMH satellite unit for observation. Your mental health issues were not considered a mitigating factor. The inmate witness has no credibility as his testimony contradicted statements made by both Sgt. Bell + Capt. Adams, who testified V. DiRenzo told them he did not file the grievance and it was not his handwriting." The "REASONS FOR DISPOSITION" portion of the disposition form was completed in the handwriting of the hearing officer as follows: "Writing false statements about an employee and signing another offender[']s name to a grievance is deceptive behavior, Inmate Williams' disciplinary history needs improvement. This disposition is given as punishment + to impress upon this offender the seriousness of his actions." In addition to the foregoing, the "SPECIAL INSTRUCTION ON CORRESPONDENCE RESTRICTIONS AND

REFERRALS" portion of the form was filed in by the hearing officer with the notation: "[r]ecommended referral to Program Committee for reassignment."

While the Court is frustrated by the lack of clarity in the hearing officer's explanation of what portion or portions of the "SUPERINTENDENT HEARING DISPOSITION RENDERED" printout she apparently filled in prior to the close of the hearing, it is noted that the hearing was closed and the audiotape stopped at 11:29 AM on December 28, 2012 for the hearing officer to "prepare" a disposition. One minute later, at 11:30 AM on December 28, 2012, the hearing officer went back on the record and announced findings of guilt with respect to all four charges, the penalties imposed, including service dates, and also read into the record the previously-quoted "STATEMENT OF EVIDENCE RELIED UPON" and "REASONS FOR DISPOSITION."

This Court is simply not convinced that the hearing officer could have filled in all of these crucial portions of the "SUPERINTENDENT HEARING DISPOSITION RENDERED" form in the one minute that elapsed between the time she went off the record to prepare the disposition and the time she came back on the record to announce such disposition and read her findings into the record. Accordingly, the Court finds that the results and disposition of the Tier III Superintendent's Hearing concluded on December 28, 2012 must be reversed.

Notwithstanding the fact that petitioner has apparently completed service of the SHU confinement and loss of privileges components of the dispositional penalties imposed following the superintendent's hearing, the Court notes that he still faces the potential consequences of the recommended loss of two months good time. The Court also takes note of the serious nature of the alleged violation of standards of inmate

misbehavior set forth in the underlying misbehavior report. Accordingly, the Court will authorize the respondent to conduct a new hearing to consider the charges set forth in the underlying inmate misbehavior report.

Based upon all of the above, it is, therefore, the decision of the Court and it is hereby

ADJUDGED, that the petition is granted, without costs or disbursements, but only to the extent that the results and disposition of the Tier III Superintendent's Hearing concluded on December 28, 2012 are reversed with the respondent authorized to conduct a new hearing in accordance with this Decision and Judgment, with said new hearing to be completed no later than November 8, 2013; and it is further

ADJUDGED, that in the event respondent elects not to conduct a new hearing in accordance with this Decision and Judgment, he is directed to expunge all reference to the Tier III Superintendent's Hearing concluded on December 28, 2012, as well as the incident underlying same, from petitioner's institutional records it is further directed to reimburse petitioner's inmate account for any mandatory surcharge imposed at the conclusion of such hearing.

Dated: September 25, 2013 at
Indian Lake, New York

S. Peter Feldstein
Acting Justice, Supreme Court