Matter of Wilson v Annucci

2016 NY Slip Op 30545(U)

March 22, 2016

Supreme Court, Franklin County

Docket Number: 2015-566

Judge: S. Peter Feldstein

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STATE OF NEW YORK
SUPREME COURT **COUNTY OF FRANKLIN**

In the Matter of the Application of
GENILE WILSON, #93-A-6675,

Petitioner,

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

-against-

ANTHONY J. ANNUCCI, Commissioner,
NYS Department of Corrections and Community
Supervision,

Respondent.

DECISION AND JUDGMENT
RJI # 16-2015-0304.44
INDEX # 2015-566
ORI # NY016015J

This is a proceeding for judgment pursuant to Article 78 of the Civil Practice Law and Rules commenced upon the Petition of Genile Wilson (hereinafter "petitioner"), verified on June 23, 2015 and filed in the Franklin County Clerk's office on July 8, 2015. Petitioner is an inmate with New York State Department of Corrections and Community Supervision (hereinafter "DOCCS"), and is currently confined at Shawangunk Correctional Facility. At the time of the commencement of this proceeding, however, petitioner was confined at Upstate Correctional Facility (hereinafter "Upstate"). Petitioner is challenging the results and disposition of a Tier III Superintendent's Hearing that was held at Upstate and concluded on March 27, 2015. *See* 7 NYCRR Part 254.

On January 29, 2015, petitioner was charged in two separate Inmate Misbehavior Reports (hereinafter "IMR") with violating DOCCS' Standards of Inmate Behavior. *See* 7 NYCRR §270.2. In the IMR authored by Correction Officer J. Hanson (hereinafter "IMR #1"), petitioner was charged with violating the following inmate disciplinary rules: 105.13 (Gangs), 102.10 (Threats), 100.11 (Assault on Staff), 104.11 (Violent Conduct) and 104.12

(Action Detrimental to Facility). *See* 7 NYCRR §270.2 (B)(1) (ii), (3)(I), (5)(ii), (5)(iii) and (6)(iv). The record reflects that IMR #1 was also endorsed by Correction Officer C. Stickney and Lieutenant S. Dubrey. In the IMR authored by Correction Officer M. Defayette (hereinafter "IMR #2"), petitioner was charged with violating rule 105.13 (Gangs). *See* 7 NYCRR §270.2 (B)(6)(iv). IMR #2 was also endorsed by Correction Officer B. LaBombard. *See* Respondent's Answer and Return at Exhibits "A" and "B".

As is set forth in IMR #1, on January 29, 2015 at approximately 1:00 p.m. at the Administrative Building of the Clinton Correctional Facility, the following is alleged to have transpired:

> "On the above date and approximate time, based upon an ongoing investigation it has been determined by proven credible and reliable sources that inmate Wilson 93A6675 conspired with multiple inmates to assault security staff at this facility. Inmate Wilson is an active member of the gang known as the bloods; he is an influential member of the komrad (*sic*) militant bloods at Clinton Correctional Facility. He has conspired with various blood affiliated inmates throughout the facility to actively encourage those and other inmates to assault staff at Clinton Correctional Facility. The following inmates conspired with inmate Wilson; Haile 10A1985, Bowen 01A1823, Cunningham 12A0325, Lightfoot Jr (*sic*) 13A0756, Barnes 00A0597. This report is supported by confidential information." Respondent's Answer and Return at Exhibit "A".

IMR #2 alleges that on January 29, 2015 at 4:20 p.m. at the Clinton Correctional Facility , Cell # UF-9-41, the following transpired:

> "On the above date and approximate time, while conducting a frisk of inmate Wilson 93A6675 cell (UF-9-41), Correction Officers Defayette and LaBombard confiscated several hand written gang material (*sic*) from inside of the small grey locker inside UF-9-41 cell. This gang material was confiscated for media review. Upon review of the hand written gang material, We (*sic*) found inmate crossing out all of the c's in the gang material. This is a known practice by the

> gang known as the Bloods. All gang material that was confiscated and reviewed was then secured in the contraband locker pending disciplinary action." Respondent's Answer and Return at Exhibit "B".

At the conclusion of a prolonged Tier III Superintendent's Hearing, Commissioner's Hearing Officer M. Liberty (hereinafter the "Hearing Officer") found petitioner guilty of all six charges and imposed a penalty of 365 days confinement in the Special Housing Unit (hereinafter "SHU"), with a concomitant loss of packages, commissary and phone privileges. Petitioner was further sanctioned with a recommended loss of 24 months of good time allowance. *See* 7 NYCRR §254.7. *See also* Respondent's Answer and Return at Exhibit "H", R. 277 and Exhibit "I".

Thereafter, by submission dated April 23, 2015, petitioner appealed the Hearing Officer's determination to respondent Anthony J. Annucci, Acting DOCCS Commissioner (hereinafter "respondent"). *See Id.* at Exhibit "K". Acting on behalf of respondent, D. Venettozzi, Director of DOCCS Special Housing/Inmate Disciplinary Program, affirmed the Hearing Officer's determination on June 17, 2015. *See* 7 NYCRR §154.8 (a). *See also* Respondent's Answer and Return at Exhibit "L".

The instant proceeding ensued.

The Court issued an Order to Show Cause on July 22, 2015 and is in receipt of respondent's Answer and Return, including *in camera* materials, verified on October 16, 2015 and supported by the October 16, 2015 Letter Memorandum of Christopher J. Fleury, Esq., Assistant Attorney General. The Court is also in receipt of respondent's Supplemental Return, as well as petitioner's Reply and Supplemental Reply.

In his pleading, petitioner raises four distinct causes of action. Initially he claims that his right to due of process of law under the Fourteenth Amendment of the United States Constitution was violated by the insufficient notice of the charges against him as alleged in IMR #1. *See* Verified Petition at ¶¶ 47 – 51. In his second claim, petitioner asserts that the Hearing Officer violated his due process rights by irrationally curtailing petitioner's ability to present witnesses and documentary evidence in defense of the charges against him. *See Id.* at ¶¶52 – 56. In his third cause of action, petitioner raises yet another due process claim, alleging that he was not afforded adequate employee assistance to aide him in preparing a defense. *See Id.* at ¶57. *See generally* 7 NYCRR Subpart 251-4. Finally, in his fourth claim petitioner asserts that his right to due process of law was violated as a result of the bias that Hearing Officer Liberty exhibited against him during the course of the Tier III Superintendent's Hearing. *See* Verified Petition at ¶58.

As is set forth in his Letter Memorandum, respondent's counsel asserts that petitioner was provided with adequate notice of the charges against him and that his Tier III Superintendent's Hearing was conducted in accordance with the law. As such, counsel argues that petitioner's causes of action are without merit and that his Petition should be dismissed.

<u>First Cause of Action – Sufficiency of Notice Provided in IMR #1</u>:

In his first claim, petitioner asserts that the notice provided in IMR #1 violated his right to due process of law, as it "did not comport wit the notice required by due process pursuant to the dictates of *Wolff v. Mc Donnell*, 418 U.S. 539 (1974), and it's progeny." Verified Petition at ¶47. Specifically, petitioner argues that IMR #1 contained "an

erroneous date, time and location of the alleged incident, and it failed to state what acts that [p]etitioner and the other named inmates engaged in to form the alleged conspiracy", and that he was not provided the correct information until after the Tier III Superintendent's Hearing had commenced, which precluded him from identifying and obtaining purportedly relevant evidence in support of his defense. *See Id.* at ¶¶49 – 51.

Respondent argues that IMR #1 provided petitioner with sufficient notice of the charges against him, as it alleged that "[p]etitioner was an active gang member that conspired with multiple inmates (individually named in the report) to assault staff at the facility", and, as such, "[t]he report clearly contained enough particulars to make an effective response." (*Internal citation and quotation marks omitted*) Letter Memorandum of Christopher J. Fleury, Esq., dated October 16, 2015, at pg. 7. Respondent also contends that it was unnecessary for IMR #1 to specify petitioner's role in the alleged incident, as "conspiring to commit an assault was itself sufficient to constitute a violation of the prison rules." *Id.* at pg 7.

With regard to the IMR's erroneous listing of the date and location of the alleged incident, respondent argues that the information provided is "proper because that was the location and date upon which the investigation into [p]etitioner's conspiracy concluded." *Id.* In support of this proposition respondent relies upon the holdings of the Supreme Court, Appellate Division, Third Judicial Department in *Matter of Kornegay v. Goord*, 21 AD3d 1236 and *Matter of Perretti v. Fischer*, 58 AD3d 999. As the investigation concluded at the place and time set forth in IMR #1, counsel argues that the "date and location listed in the January 29, 2015 Inmate Misbehavior Report were not erroneous and [p]etitioner was afforded proper notice of the charges." *Id.*

The Court is not persuaded by petitioner's contention that IMR #1 failed to provide him with sufficient notice of the charges against him, as it referenced the date and time when the investigation into the alleged conspiracy was completed, along with the location where such investigation was concluded. It is well established that "[a]dequate notice is provided when a misbehavior report sets forth the rule violations alleged and the conduct providing a basis for the charges, so as to enable the preparation of a defense (*see Matter of Williams v. Fischer*, 93 AD3d 1051, 1052 [2012]; *Matter of Grant v. Prack*, 86 AD3d 885, 886 [2011]; *see also* 7 NYCRR 251-3.1 [c])." *Toro v. Fischer*, 104 AD3d 1036, 1037.

Inasmuch "[a]s the charges resulted from an ongoing investigation and involved numerous and varied contacts, [the Court] find[s] that the misbehavior report adequately apprised petitioner of the charges against him and provided sufficient information to allow him to prepare defense." *Williams v. Fischer*, 114 AD3d 977 (citation omitted). *See also Meachem v. Fischer*, 108 AD3d 973, *Kornegay v. Goord*, 21 AD3d 1236, 1236-1237, *Shabazz v. Goord*, 309 AD2d 999, *Millan v. Goord*, 284 AD2d 827 and *Hayward v. Fischer*, 101 AD3d 1308, 1309 (holding that "[t]he misbehavior report, which was the result of an investigation based upon confidential information, provided the date upon which the investigation was concluded and set forth sufficient details as to apprise petitioner of the charges and enable him to prepare a defense").

Furthermore, the record reflects that after the precise time period and location of the alleged incident was divulged during the Tier III Superintendent's Hearing the Hearing Officer provided petitioner with a further opportunity meet with his employee assistant, thereby negating any claim of prejudice due to lack of notice. *See Poe v. Fischer*, 107 AD3d 1251, 1252 and *Toro v. Fischer*, 104 AD3d 1036 at 1037. Accordingly, the Court

hereby finds that IMR #1 provided petitioner with adequate notice, such that he was able to prepare a sufficient defense to the charges alleged therein.

As for the Hearing Officer's *in camera* consideration of confidential testimony and evidence, "[p]etitioner was not entitled to disclosure the confidential information." *McDuffy v. Fischer*, 107 AD3d 1190. *See also Hall v. Fischer*, 101 AD3d 1309, *Washington v. Fischer*, 78 AD3d 1399 and *Shabazz v. Artus*, 72 AD3d 1299. Furthermore, the Hearing Officer's receipt of confidential testimony and information detailing the extent of the investigation into the conspiracy provided her with the ability to independently assess the credibility and reliability of the evidence supporting the charges against petitioner. *See Mahud Khabir Al-Matin v. Prack*, 131 AD3d 1293, *Harrison v. Prack*, 87 AD3d 1221 and *McDuffy v. Fischer*, 107 AD3d 1190.

"To the extent that the testimony of petitioner and his inmate witnesses conflicted with the confidential information, this presented a credibility issue for the Hearing Officer to resolve (*see Matter of Perez v. Fischer*, 89 AD [1310] at 1311)." *Hayward v. Fischer*, 101 AD3d 1308, 1309. Similarly, "[p]etitioner's protestations of innocence ... [also] raised a credibility question to be resolved by the Hearing Officer." *Brooks v. Fischer*, 92 AD3d 987, 988 (citation omitted). Petitioner has failed to demonstrate why this Court should disturb the Hearing Officer's credibility findings.

Second Cause of Action – Hearing Officer's Alleged Irrational Denial of Petitioner's Ability to Present Witnesses and Documentary Evidence in His Defense:

In his second cause of action, petitioner asserts that his right to due process under the Fourteenth Amendment was violated, as the Hearing Officer irrationally curtailed

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petitioner's "right to present material and relevant witnesses and documentary evidence in his defense". Verified Petition at ¶52. As is set forth in his pleading, petitioner raises three separate violations of his right to present evidence in his defense.

First, he claims that the Hearing Officer irrationally denied his request to call Clinton Correction Facility's maintenance supervisor, as well as the officer assigned to monitor to the video footage from the security cameras posted in the facility's "north yard". *See Id.* at ¶53. Petitioner contends that the testimony garnered from his requested witnesses would have been both material and relevant, as a prior witness testified that the security footage from the north yard cameras would not have shown the incident, and the witnesses requested by petitioner "may have contradicted that testimony". *Id.*

Next, petitioner claims that the Hearing Officer's refusal to allow him to obtain the so-called "go-round" sheets of the other inmates named in IMR #1 lacked a rational basis, particularly in light of the fact that the evidence adduced at the hearing showed that petitioner "undisputably could hot have met with one of those inmates" during the time period in which he was alleged to have met with his co-conspirators. *See Id.* at ¶55.

Finally, petitioner claims that the Hearing Officer also lacked a rational basis in her denial of his request for "the cell inspection papers concerning the cell in which the written gang material was found within the storage locker" *Id.* at ¶56. Petitioner claims that the Hearing Officer's denial was in violation of his due process right to marshal evidence in his defense, as there was no showing that the documents were irrelevant or immaterial, nor was there a determination that their disclosure would have posed a threat to institutional safety. *See* Verified Petition at ¶56.

In relation to the Hearing Officer's denial of petitioner's request to call as witnesses

the maintenance supervisor and the officer assigned as security camera monitor, counsel for respondent argues that the request was denied by the Hearing Officer because their testimony would have been irrelevant as the video footage of the North Yard during the time period of the alleged incident no longer existed. *See* Letter Memorandum of Christopher J. Fleury, Esq., dated October 16, 2015, at pg. 9. Counsel contends that "[s]ince these witnesses would not be able to provide any testimony relating to the charges, they were 'neither material nor relevant'.... C.H.O. Liberty provided [p]etitioner a written statement explaining the reasons for the denial. As such, [petitioner's request for these witnesses was properly denied." (Internal citation omitted) *Id.*

Pursuant to the provisions of 7 NYCRR §254.5 (a), an "inmate may call witnesses on his behalf provided their testimony is material, is not redundant, and doing so does not jeopardize institutional safety or correctional goals. If permission to call a witness is denied, the hearing officer shall give the inmate a written statement stating the reasons for the denial, including the specific threat to institutional safety or correctional goals presented."

The record reflects that on March 27, 2015, the Hearing Officer provided petitioner with a written statement that his request to call the maintenance supervisor and "Yard Camera Officer" had been denied based upon the following explanation: "You (*sic*) proposed testimony regarding whether the yard cameras work, however this proposed testimony was neither material nor relevant as no video was available due to time lapse." Respondent's Answer and Return at Exhibit "E". As such, it is clear that the Hearing Officer complied with the requirement that she provide petitioner with a written statement explaining the denial and the record reflects that the Hearing Officer had a

good faith basis for the denial; *i.e.* their testimony would be irrelevant to the incident alleged in IMR #1, as the security camera footage of the north yard during the time period in question no longer existed.[1]

"Absent any indication that the requested testimony was relevant, annulment is not required (*see Matter of Davis v. Goord*, 46 AD3d 955, 956 [2007], *lv dismissed* 10 NY3d 821 [2008]; *Matter of Anderson v. Morrow*, 268 AD2d 638, 639 [2000]; *Matter of Konigsberg v. Selsky*, 255 AD2d 702, 703 [1998]; *see also Matter of Ross v. Bezio*, 75 AD3d 1027, 1029 [2010])." *Jones v. Fischer*, 102 AD3d 1025, 1025. *See also Ciotoli v. Goord*, 256 AD2d 1192, 1193 (holding that the "[t]he Hearing Officer properly refused to call a witness whose testimony would be irrelevant to the proceeding"). Therefore, the Court finds petitioner's arguments regarding the Hearing Officer's denial of petitioner's request to call the aforementioned witnesses to be without merit.

As for petitioner's claim that the Hearing Officer irrationally denied petitioner unabridged access to the so-called "go-round" sheets for the other inmates named in IMR #1 (*see* Verified Petition at ¶55), respondent argues the requested documents were submitted into the record of the Tier III Superintendent's Hearing. Specifically, petitioner was provided with a redacted copy that disclosed only information relating to him;

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[1] Although the issue is not readily articulated by petitioner, an underlying theme in his petition is that his rights have been violated by Clinton Correctional Facility's failure to preserve the security camera footage from the north yard during the time period in which he allegedly conspired with the other inmates named in IMR #1. Nevertheless, petitioner has failed to formally assert this issue as a claim within his Verified Petition, and, as such, the Court shall not pass judgment upon the impact of the facility's failure to preserve the security footage. Inasmuch as petitioner argues that the Hearing Officer violated his due process rights by failing to obtain the footage, the Court hereby perceives no error, "as the record demonstrates that those materials did not exist" by the time petitioner made his request to the Hearing Officer. *See Hayes v. Fischer*, 78 A.D.3d 1396, 1397 and *Chavis v. Goord*, 58 A.D. 954, 955. *See also* Respondent's Answer and Return at Exhibit "E". As there is no indication that the evidence requested was destroyed in bad faith, the Hearing Officer cannot be faulted for failing to produce evidence that did not exist. *See Russell v. Selsky*, 50 A.D.3d 1412.

whereas, the Hearing Officer was provided an un-redacted copy containing the "go-round" sheets for the other inmates named in IMR #1. *See* Letter Memorandum of Christopher J. Fleury, Esq., dated October 16, 2015, at pg 7-8. *See also* Respondent's In Camera Materials. As such, it is argued that petitioner's claim is without merit and must be denied.

The record reflects that the Hearing Officer provided petitioner with a written statement indicating that he had been provided with all relevant log book entries which pertained to petitioner individually. Additionally, as noted above, the Hearing Officer received an un-redacted copy of the "go-round" sheets for her review and consideration. *See* Respondent's Answer and Return at and Exhibit "H" at R.273 and Exhibit "I". As set forth in the Hearing Officer's written statement to petitioner, "[c]onfidential documents were reviewed by the hearing officer and will remain confidential to protect the safety and security of the facility, staff, and confidential sources of information". *See Id.* at Exhibit "E".

The Court hereby finds no error in the Hearing Officer's decision to only provide petitioner with his own "go-round" sheets. The undersigned's hereby finds that the Hearing Officer's review of the un-redacted "go-round" sheets sufficiently protected petitioner's right to due process of law, and, as such, petitioner's evidentiary claim is denied. *See generally*, *Morrishill v. Prack*, 120 A.D.3d 1474.

Next, counsel for respondent argues that the Hearing Officer properly denied petitioner's request for "cell inspection papers" of the cell in which the handwritten gang materials were discovered (*see* Verified Petition ¶56), as the documents were irrelevant and pertained to "a period of time prior to both the charges under consideration and to

his transfer [into] that cell". *See* Letter Memorandum of Christopher J. Fleury, Esq., dated October 16, 2015, at pg 8; *see also* Respondent's Answer and Return at Exhibit "H", R.15.

Apart from his speculative assertions that the handwritten gang materials were planted in petitioner's cell in an effort to set him up, the record is devoid of any evidence demonstrating that the inspection records of cell UF-9-41 would be relevant to the charge alleged in IMR #2. As such, the Court hereby finds that the Hearing Officer's denial of petitioner's evidentiary request was grounded in a rational basis and is supported by the record as a whole.

<u>Third Cause of Action – Sufficiency of Petitioner's Employee Assistance</u>:

In petitioner's third cause of action he claims that the outcome of his Tier III Superintendent's hearing was rendered in violation of his right to due process of law, in that he was not provided with adequate employee assistance in preparing his defense. *See* Verified Petition at ¶57. In contrast, respondent argues that petitioner failed to carry his heavy burden of proving that he was not provided with adequate employee assistance, claiming petitioner's only allegation regarding his employee assistants, is that they "'denied him both the logbook entries and any video of the alleged incident'". *See* Letter Memorandum of Christopher J. Fleury, Esq., dated October 16, 2015, at pg 9 (*quoting* Verified Petition at ¶¶18 and 19). As noted above, Assistant Attorney General Fleury asserts that petitioner's request for the video of the incident was at a time when the footage no longer existed and un-redacted copies of the log-book entries requested by petitioner were provided for the Hearing Officer's consideration. Ultimately, respondent argues that the record demonstrates that petitioner received more than adequate

employee assistance, contending "that he was given more assistance than is typical in disciplinary hearings. As such, his claim is without merit and must be denied." *Id.* at pg 10.

Pursuant to the provisions of 7 NYCRR §251-4.1 (a)(4), "[a]n inmate shall have the opportunity to pick an employee from an established list of persons who shall assist the inmate when a misbehavior report has been issued against the inmate if: ... the inmate is confined pending a superintendent's hearing to be conducted pursuant to be conducted pursuant to [7 NYCRR Part 254]". Moreover, 7 NYCRR §251-4.2 provides, in pertinent part, that "the assistant's role is to speak with the inmate charged, to explain the charges to the inmate, interview witnesses and to report the results of his efforts to the inmate. He may assist the inmate in obtaining documentary evidence or written statements which may be necessary."

In order to prevail on a claim of inadequate employee assistance, an inmate petitioner must establish that prejudice resulted form the assistant's failure to comply with applicable regulations. *See Serrano v. Coughlin*, 152 AD2d 790. Also, any potential prejudice can be alleviated by corrective action taken by the hearing officer. *See Jackson v. Fischer*, 87 AD3d 775, *Harris v. Selsky*, 28 AD3d 982 and *Blackwell v. Goord*, 5 AD3d 883, *lv denied*, 2 NY3d 708.

In the case at bar, the voluminous record belies petitioner's claim that he did not receive adequate employee assistance. Throughout the course of his Tier III Superintendent's Hearing, petitioner was given the opportunity to meet with his employee assistants on multiple occasions. The employee assistants went to great lengths to interview the potential witnesses proposed by petitioner and to inquire of their

willingness to testify on petitioner's behalf, to secure the requested documentation and to thereafter report back to petitioner as to the results of their efforts. *See* Respondent's Answer and Return at Exhibit "D" and "E".

With regard to petitioner's request for video footage of the alleged incident, it is clear that his employee assistants attempted to obtain the footage; however, at the time the request was made the video no longer existed. *See Id.* Moreover, petitioner has not shown any demonstrable prejudice as a result of the fact that the un-redacted log-book entries were only provided to the Hearing Officer. Accordingly, the Court hereby rejects "petitioner's contention that he was denied effective employee assistance, premised on the assistant's failure to obtain certain documents [and evidence], as the documents [and evidence] requested either did not exist, were confidential or were irrelevant (*see Matter of Cliff v. Selsky*, 293 AD2d 885, 885, ... [2002])." *Mitchell v. Bezio*, 69 AD3d 1281, 1282.

<u>Fourth Cause of Action – Alleged Hearing Officer Bias</u>:

In his final claim, petitioner contends that the outcome of his Tier III Superintendent's Hearing was rendered in violation of his right to due process of law, in that the Hearing Officer was biased against him and that her findings of guilt and the penalties she imposed upon petitioner flowed from such bias. *See* Verified Complaint at ¶58. Counsel for respondent argues that petitioner's claim of hearing officer bias is meritless and speculative at best, and that he has failed to support his claims with record evidence.

Generally Speaking, inmate disciplinary proceedings "must be administered in a completely fair, impersonal and impartial manner and must be as consistent as possible (given the need for individualized decisions)." 7 NYCRR §250.2 (d). An inmate claiming

bias must point to specific indicia within the record which demonstrate that the hearing officer was biased and that the determination flowed from such bias. *See Paddyfote v. Fischer*, 118 AD3d 1240, *Shoga v. Fischer*, 118 AD3d 1232, *Quezada v. Fischer*, 113 AD3d 1004 and *McFadden v. Prack*, 120 AD3d 853, 855. Moreover, it has been held that the mere fact that a hearing officer ruled against an inmate was insufficient to establish the hearing officer's bias. *Jay v. Fischer*, 118 AD3d 1364. Additionally, a hearing officer's decision to limit "petitioner's questions and evidence to matters that were relevant, and finding certain witnesses more credible that others, does not indicate bias (*see*, *Matter of Lee v. McCoy*, 233 AD2d 633)." *Dumpson v. McClellan*, 242 AD2d 805, 806.

In the instant proceeding, the record is absolutely devoid of any evidence that would support a colorable claim of hearing officer bias. As succinctly noted by respondent's counsel, "C.H.O. Liberty went far beyond her obligations to ensure that [p]etitioner was given a fair hearing. She spent a majority of this extraordinarily long disciplinary hearing ensuring that [p]etitioner had all of the requested documentary evidence he was entitled to ... and that all relevant and material witnesses he requested were given the chance to testify". Letter Memorandum of Christopher J. Fleury, Esq., dated October 16, 2015, at pg 11.

The Court has duly considered petitioner's remaining contentions and, to the extent that they are not addressed by the foregoing analysis, the undersigned hereby finds such claims to be without merit.

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

ADJUDGED, that the Verified Petition of Genile Wilson, filed July 8, 2015, is dismissed.

Dated: March 22, 2016 at
Indian Lake, New York

S. Peter Feldstein
Acting Justice, Supreme Court