

Matter of Joseph v LaClair

2010 NY Slip Op 30636(U)

March 8, 2010

Supreme Court, Franklin County

Docket Number: 2009-0858

Judge: S. Peter Feldstein

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**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF FRANKLIN

X

In the Matter of the Application of
NIGEL JOSEPH, #97-A-3826,

Petitioner,

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

-against-

DARWIN LaCLAIR, Superintendent,
Franklin Correctional Facility,

Respondent.

DECISION AND JUDGMENT

RJI #16-1-2009-0304.77

INDEX # 2009-0858

ORI #NY016015J

X

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Nigel Joseph, filed in the Franklin County Clerk's office on June 23, 2009. Petitioner, who is an inmate at the Franklin Correctional Facility, is challenging the results of a Tier II Disciplinary Hearing held at the Franklin Correctional Facility and concluded on April 16, 2009. The Court issued an Order to Show Cause on July 1, 2009 and respondent subsequently moved to dismiss for lack of personal jurisdiction. By Decision and Order/Supplemental Order to Show Cause dated November 17, 2009, respondent's motion was denied and a Supplemental Order to Show Cause was issued. The Court has since received and reviewed respondent's Answer, verified on January 13, 2010, supported by the Affirmation of Kelly L. Munkwitz, Esq., Assistant Attorney General, dated January 13, 2010. The Court has also received and reviewed petitioner's Reply thereto, filed in the Franklin County Clerk's office on February 2, 2010.

As the result of an incident that occurred at the Franklin Correctional Facility on April 5, 2009, petitioner was issued an inmate misbehavior report charging him with violations of inmate rules 109.10 (out of place) and 181.10 (failure to comply with

hearing disposition). The inmate misbehavior report, authored by C.O. Stewart, alleged that at approximately 11:30 PM on April 5, 2009 the petitioner “. . . was observed wandering the dorm area. Inmate Joseph is currently on (NPH) [presumably confined during non program hours] status and did not have permission to be outside his cube . . . At approximately 11:00 PM Inmate Joseph was counseled by this officer for failing to follow his tier disposition . . .” A Tier II Disciplinary Hearing was held at the Franklin Correctional Facility commencing on April 8, 2009. At the conclusion of the hearing, on April 16, 2009, petitioner was found guilty as charged and a disposition was imposed confining him to keeplock status for 30 days and directing the loss of various privileges for a like period of time. All of these dispositional penalties, however, were suspended and deferred for 60 days. Upon administrative appeal the results and disposition of the Tier II Disciplinary Hearing were affirmed. This proceeding ensued.

At the outset of the hearing petitioner appeared to take the position that he had not left his cube and that the charges against him represented a case of mistaken identity. Later, after various witnesses, including the author of the inmate misbehavior report, had testified, the following colloquy occurred:

| | |
|------------------|---|
| “Inmate Joseph: | Sir, can I say something? |
| Hearing Officer: | Yes, go ahead. |
| Inmate Joseph: | Sir, I would like to say that at the time of this incident, as I said before, I was mentally impaired, I was going through a lot. You know, I was working through OMH . . . |
| Hearing Officer: | So you don’t feel as though you were responsible for your actions? |
| Inmate Joseph: | No, I am not saying I’m not responsible for my actions. I’m saying that there were mitigating circumstances I wish you would consider. |

Hearing Officer: Therefore, are you then not denying the fact that you were out of your cube?

Inmate Joseph: I'm not saying anything so what I'm saying at the time, a lot of times, what happens, is like what I'm going through, like, what you call a psychotic episode, it's like sometimes my body is here but my mind is not really functioning intellectually correct. I lose focus on my surroundings and things and the time I was not functioning correctly.

Hearing Officer: You recall that you weren't functioning correctly at that time? You recall that now?

Inmate Joseph: No, what I'm saying, I'm telling you the truth. What happened is I had gotten some bad news and I wasn't functioning.

Hearing Officer: Okay, just so I'm absolutely clear on what you're telling me, you're saying you were out of your cube but at the time you were under a lot of duress and not at your full possession of your faculties and that's why you were out of your cube.

Inmate Joseph: Yes, that's what it is. If you want, you can check with OMH because I was, the past 2 months, basically something happened and. . .

Hearing Officer: I know, you had a issue at home. A family issue. You told me that.¹

¹ This comment by the hearing officer was made at the April 16, 2009 session of the Tier II Disciplinary Hearing that is the subject of this proceeding. Although a review of the transcript of the hearing reveals no discussion of any "family issue" at petitioner's home, the Court notes that the same hearing officer presided over a Tier II Disciplinary Hearing involving the petitioner on April 14, 2009, during which a family issue at petitioner's home was discussed. The results and disposition of the Tier II Disciplinary Hearing of April 14, 2009, were reviewed by this Court in a separate proceeding under Franklin County Index No. 2009-0802.

Inmate Joseph: I wasn't, I'm not going to come down here and give you a hard time, just take that into consideration.

Hearing Officer: I will. Do you have any other testimony?

Inmate Joseph: No sir."

At that point the hearing officer closed the testimonial phase of the hearing and a short time later issued his decision.

Petitioner asserts that he placed the hearing officer on "constructive notice" that his mental health was an issue in the Tier II Disciplinary Hearing. According to petitioner, the hearing officer was therefore required to consider his mental health but that no such consideration was given. In this regard petitioner further asserts that he "... specifically requested the hearing officer check with OMH which was never met."

A hearing officer presiding over a prison disciplinary proceeding where an inmate's mental health is "at issue" must consider evidence regarding such inmate's mental condition. *See Huggins v. Coughlin*, 76 NY2d 904, *aff'g* 155 AD2d 844. In the case at bar, however, notwithstanding petitioner's general testimony that he was under a lot of stress at the time of the incident and not fully in possession of his faculties, he specifically declined to state that he was not responsible for his actions. Instead, he merely requested the hearing officer to consider the "mitigating circumstances." The hearing officer agreed to do so and after finding the petitioner guilty as charged suspended the dispositional penalties for 60 days. Thus, if petitioner's maintained a clean disciplinary record for 60 days after the hearing he would suffer no direct consequences as a result of the incident that was the subject of the hearing.

The Court also observes that although the petitioner suggested the hearing officer could "check with OMH," he never affirmatively requested that any OMH representative

be called to testify on his behalf. In this regard it is noted that almost immediately after making the suggestion petitioner was asked whether he had any further testimony and responded in the negative. Unlike the situation in *Rosado v. Kuhlmann*, 164 AD2d 199, *lv den* 77 NY2d 806, moreover, the Court finds that there was simply no evidence that any serious psychiatric problems were associated with the conduct underlying the issuance of the inmate misbehavior report in this case. The hearing officer, therefore, was not under “constructive notice” of petitioner’s mental condition so as to trigger any independent duty to consider that issue. *See Siao-Pao v. Selsky*, 274 AD2d 698, *lv den* 95 NY2d 767.

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

ADJUDGED, that the petition is dismissed.

Dated: March 8, 2010, at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice