

Matter of Hinton v Rock
2012 NY Slip Op 30901(U)
March 13, 2012
Supreme Court, Franklin County
Docket Number: 2011-1091
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
LEONARD HINTON, #96-A-0837,
Petitioner,

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

DECISION AND JUDGMENT

RJI #16-1-2011-0473.92

INDEX # 2011-1091

ORI #NY016015J

-against-

DAVID ROCK, Superintendent,
Upstate Correctional Facility,

Respondent.

X

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Leonard Hinton, verified on October 27, 2011 and filed in the Franklin County Clerk's office on October 31, 2011. Petitioner, who is an inmate at the Upstate Correctional Facility, is challenging the results of a Tier II Disciplinary Hearing held at the Upstate Correctional Facility on August 30, 2011. The Court issued an Order to Show Cause on November 4, 2011 and has received and review respondent's Answer, verified on December 27, 2011 and supported by the Affirmation of Cathy Y. Sheehan, Esq., Assistant Attorney General, dated December 27, 2011. The Court has also received and reviewed petitioner's Reply thereto, filed in the Franklin County Clerk's office on January 18, 2012.

As a result of an incident that occurred at the Upstate Correctional Facility on August 15, 2011 petitioner was issued an inmate misbehavior report charging him with a violation of inmate rule 113.14 ("an inmate shall not possess . . . unauthorized . . .

quantities of medication . . .”). The inmate misbehavior report, authored by Corrections Sergeant Debyah, alleged, in relevant part, as follows:

“ . . . I Sgt. Debyah was advised by CO R. Paige, who had conducted a cell search of 10-B-24 cell occupied by Inmate Hinton . . . that he had confiscated a large amount of medication, from this cell. The medication was taken to the block nurse for identification. Nurse Lordi identified them as follows (1) Norvir #5, (1) Isentress #3, (1) Reyataz #5, (1) B-Complex #5, (1) Epir #5, (1) KCL#1, (1) vitamin[?] E, (1) Famvir #11, (1) Folic Acid #5, (1) Vasotec #5, and (22) Tylenol Packets (44 pills) . . . [T]hese are OTC medications issued to this inmate.”

A Tier II Disciplinary Hearing was commenced at the Upstate Correctional Facility on August 27, 2011. At the conclusion of the hearing, on August 30, 2011, petitioner was found guilty as charged and a disposition was imposed confining him on keeplock status for 30 days and directing the loss of various privileges for a like period of time. Upon administrative appeal the results and disposition of the Tier II Disciplinary Hearing were affirmed. This proceeding ensued.

Although the photograph of the medications purportedly confiscated from petitioner’s cell, a copy of which was annexed to respondent’s Answer as part of Exhibit C, depicts what appears to be numerous packets (presumably of Tylenol), the Court is unable to determine from the photograph whether any of the packets had been opened and the contents removed. In addition, the photograph depicts what appears to be a variety of loose pills/capsules. During the course of the underlying hearing C.O. Paige was shown the photograph and asked whether he had taken the contraband out of petitioner’s cell. C.O. Paige answered in the affirmative. The hearing officer then asked “. . . was this medication found like this . . . or were the medications in a blister pack when you found them?” C.O. Paige responded “Um, both . . . [s]ome in the pack and some loose.”

Petitioner, for his part, did not deny that certain medications were confiscated from his cell on the morning of August 15, 2011. According to his testimony, however, the

confiscated medications where “prescribed” to him for daily self-administration and that the prescription was filled on the date of the incident. “So,” he testified, “I don’t have excess medications. Those are my medications.” Upon further questioning by the hearing officer the petitioner stated that the medications were provided to him ahead of time, in a 30-day supply. The hearing officer then asked about the 22 packets (44 pills) of Tylenol and petitioner responded that he did not have that much Tylenol.

During subsequent testimony Nurse Fairchild confirmed that the confiscated medications were “. . . all his [petitioner’s] prescribed meds.” She also testified, however, that all of the medications are provided to the petitioner in blister packs and that there would be no reason for petitioner to have loose pills of any sort in his cell. With respect to the issue of loose pills, petitioner maintained that because his cell is the last to receive a breakfast tray and the first to get picked up after breakfast, he removes his medication from blister packs the night before to take early in the morning with breakfast. Petitioner also denied that he was in possession of all of the loose pills depicted in the contraband photograph.

Relatively early in the hearing, after petitioner testified that he did not have “that many” (22) Tylenol packets, he stated that he “. . . wanted the video to show that . . . them didn’t never came out of my cell . . . I wanna see the nurse pull’em [the loose pills/packets] out, I wanna see, cause [sic] the video is right there. Cause [sic] I never had all of those [22 Tylenol packets].” Much later in the hearing, after all DOCCS witnesses had testified, the following colloquy occurred:

“Lieutenant Bishop
[Hearing Officer]:

Okay. Do you have anything else?

Hinton:

Yes sir. Uh, I, I request, um, the video from, to Nurse Lordy’s nurses [sic] station to, to, to verify the medications

that were brought to her and emptied out of whatever they were put in . . . There was video of that officer [presumably, C.O. Paige] transferring the medication to the nurse and the nurse pouring out the contents and, um, doing whatever she did with, with the . . .

Lieutenant Bishop: But what, what would you, why would we watch the video? What, what are we gonna get from this video?

Hinton: We gonna get and see whether the pills were, um, loose or whether pills were in their packets.

Lieutenant Bishop: Okay. Um, I'm gonna deny that, that video request at this point. Lets see that's irrelevant. You've already stated that you previously take out your pills in the morning so obviously you have loose pills. And we have excess Ibuprofen [Tylenol] packets and what not. So that's denied. Do you have anything else?

Hinton: No sir.

Lieutenant Bishop: Okay. Do you have any procedural objection to the way this hearing has been conducted?

Hinton: Yes I just object to the whole hearing."

The Court finds that petitioner's challenge to the hearing officer's denial of his request for production of the security video in question is not preserved for judicial review since petitioner failed to interpose a specific objection to such denial. *See Woods v. Leclair*, 50 AD3d 1286, *Lopez v. Goord*, 49 AD3d 1044, *lv den* 11 NY3d 703 and *Towles v. Selsky*, 12 AD3d 737, *lv den* 4 NY3d 706. In this regard the Court finds petitioner's general objection to "the whole hearing" failed to put the hearing officer on notice as to what procedural ruling(s) was contested, thus inhibiting the potential for corrective

action. In any event, even if the Court was to consider the merits of petitioner's challenge, it would, for the reasons set forth below, find that the hearing officer did not err in denying petitioner's request for production of the security video showing the nurse's station.

Since petitioner acknowledged possessing some packets of Tylenol and some loose pills in his cell, the security video sought by the petitioner would only be relevant if the scene it depicted was in sufficient detail to allow specific identification of the numbers/types of loose pills and numbers of Tylenol packets received at the nurse's station. This Court finds that it is wildly speculative, indeed bordering on fantasy, to presume that a security camera at the Upstate Correctional Facility would provide that level of detail.

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 13, 2012 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice