

Matter of Williams v Fischer
2012 NY Slip Op 32347(U)
September 7, 2012
Supreme Court, Franklin County
Docket Number: 2012-112
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
JAMEEL WILLIAMS, #96-B-1292,
Petitioner,

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

-against-

BRIAN FISCHER, Commissioner,
NYS Department of Corrections and
Community Supervision, and **DARWIN
LaCLAIR**, Superintendent, Franklin
Correctional Facility,

Respondents.

DECISION AND JUDGMENT

RJI #16-1-2012-0051.17

INDEX # 2012-112

ORI #NY016015J

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This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Jameel Williams, verified on January 27, 2012 and filed in the Franklin County Clerk's office on February 14, 2012. 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 commencing on January 3, 2012 and concluding on January 10, 2012. The Court issued an Order to Show Cause on March 5, 2012 and received and reviewed respondents' Answer, verified on April 26, 2012, as well as petitioner's Reply thereto, filed in the Franklin County Clerk's office on May 11, 2012.

By Decision and Order dated May 17, 2012 the Court rejected respondents' application for an order transferring this proceeding to the Appellate Division, Third Department, and directed them to serve supplemental answering papers. The Court has since received and reviewed respondents' supplemental Answer, verified on June 21, 2012 and supported by the Affirmation of Brian J. O'Donnell, Esq., Assistant Attorney General, dated June 21, 2012. The Court has also received and reviewed petitioner's Reply thereto,

verified on June 28, 2012 and filed in the Franklin County Clerk's office on July 3, 2012.

As a result of an incident that occurred at the Franklin Correctional Facility on December 29, 2011 petitioner was issued an inmate misbehavior report charging him with violations of inmate rules 104.13 (creating a disturbance), 181.10 (compliance with disposition), 106.10 (failure to obey direct order) and 109.10 (out of place). The inmate misbehavior report, authored by C.O. Flint, alleged in relevant part, as follows:

“ . . . [W]hile walking past the inmate showers door I . . . noticed two inmates talking in the inmate shower area. Upon making a round of the shower area I found inmate Williams . . . hanging out talking with an unknown inmate while on LOR [loss of recreation]. Inmate Williams had been spoken to earlier in the year about his LOR Procedures . . . It should be noted that at no time did he ask or receive permission to leave his cube or the dorm area. Inmate Williams was issued a direct order to hand over his ID card and exit the shower area. He failed to comply and became argumentative saying 'I was just talking [illegible] my ILC [Inmate Liaison Committee] Rep.' This causing multiple other inmates in the general vicinity just stop what they were doing and watch the situation at hand. A second direct order was issued and area supervisor was notified. Inmate Williams placed FBP [full bed pending]. No further incident . . . ”

A Tier II Disciplinary Hearing was commenced at the Franklin Correctional Facility on January 3, 2012. At the conclusion of the hearing, on January 10, 2012, petitioner was found guilty as charged and a disposition was imposed confining him during non-programming hours for 30 days, confining him on keeplock status for 30 days (suspended and deferred) and directing the loss of various privileges for 30 days. Upon administrative appeal the results and disposition of the Tier II Disciplinary Hearing concluded on January 10, 2012 were affirmed. This proceeding ensued.

Petitioner testified at his disciplinary hearing that the incident underlying the issuance of the inmate misbehavior report did not unfold in the manner described in the report. According to petitioner's testimony, while in the bathroom during program hours he engaged in a brief conversation with Inmate Lopez, who petitioner believed to be a member of the Inmate Liaison Committee. According to petitioner's testimony, however,

Inmate Lopez advised him that he was no longer on the committee. That, according to petitioner, was the end of their conversation. Petitioner further testified that he and C.O. Flint never encountered each other or exchanged any words in the bathroom/shower area. Petitioner also testified that after his conversation with Inmate Lopez he “. . . walked into the dorm, and next thing you know, I was told I was getting a misbehavior report. I asked why, he [presumably C.O. Flint] said you know my rule, I told you last time I worked, you are not allowed to talk to any one during loss of rec. As you see in the misbehavior report, he [presumably C.O. Flint] stating that I need to ask him permission to leave my cube and all these other places when I’m not on cube confinement.”

At the Tier II Disciplinary Hearing concluded on January 10, 2012 petitioner took the position that a false inmate misbehavior report was issued in retaliation against him for filing a grievance approximately two weeks before the December 29, 2011 incident. In his hearing testimony the petitioner described the grievance as follows: “. . . I sent . . . a formal complaint previously, two weeks ago, before any of this, cause this officer [presumably C.O. Flint] been telling me the same thing and been telling, dragging through the same thing, he’s asking, telling me, I can’t talk ta [sic] the guys that I’m pushing¹ even when I’m going out the door taking ‘em ta [sic] chow and everything.” Later in the hearing petitioner added that what drove him to file the grievance was “. . . because I ask the officer [presumably C.O. Flint] why he telling me I’m not allowed ta [sic] talk and he told me this is, was his rule . . . I said listen C.O., I don’t want no problems with you, but you telling me I’m not allowed ta [sic] talk, I have to talk to people that I’m mobile assistance [sic] [see footnote no.1] . . . and I file a grievance.”

¹ Petitioner’s program assignment involved providing “mobile assistance” to several wheelchair bound inmates.

After three inmate witnesses testified on behalf of petitioner, C.O. Flint provided testimony, via speaker phone, that was consistent with the allegations set forth in the inmate misbehavior report. The hearing officer then asked C.O. Flint if he wrote the misbehavior report “. . . in retaliation for ah grievance inmate Williams issued on you?” C.O. Flint responded “[n]o sir, that’s, that’s not the case at all.” Shortly after C.O. Flint’s testimony concluded the petitioner stated that he “. . . asked for the grievance ta [sic] be put in place inta [sic] the record, it’s not even here.” The hearing officer responded, in effect, that it was petitioner’s responsibility to provide copies of the inmate grievance papers. Petitioner then described the difficulties allegedly associated with obtaining copies of the grievance papers so soon after they were filed and again requested that the hearing officer obtain them. At that point the following colloquy occurred:

HEARING OFFICER:	It’s not my responsibility.
INMATE WILLIAMS:	Ok, well I
HEARING OFFICER:	It’s your responsibility if you want to bring documentary evidence. It’s not my responsibility to bring your evidence for you.
INMATE WILLIAMS:	No I didn’t ask, I was asking can I
HEARING OFFICER:	No you asked for it to be entered inta [sic] record and I told you it’s your responsibility.
INMATE WILLIAMS:	But the fact.
HEARING OFFICER:	It’s not my responsibility
INMATE WILLIAMS:	Right.
HEARING OFFICER:	To get your evidence . . .
INMATE WILLIAMS:	. . . I’m gonna raise my objection, cause I asked for help ta [sic] get documentary evidence, I even wrote ta [sic] the Captain’s office

pertaining ta [sic] that, uhm, and I can't get it so, I don't know what, and I do, I can't get no assistance for a Tier 2 hearing, so, ah, there's nothing I can do. I've been placed on full bed [pending the hearing] where, where can I go? They wouldn't even let me go to Law Library, I asked 'em, one of the officers said I can't go.

HEARING OFFICER: Did you . . . write to the Dep of Security?

INMATE WILLIAMS: I wrote, I did all that, email wrote, I got a commissary buy, wrote that all out at once and I still didn't get nothing back, I couldn't go to law library I couldn't get no documentary evidence present that out my hearing, no nothing, so."

An inmate at a Tier II Disciplinary Hearing has a regulatory right to submit relevant documentary evidence. *See* 7NYCRR §253.6(c). Evidence of a past grievance filed by an inmate against a correction officer who authored an inmate misbehavior report, moreover, is plainly relevant to an inmate's retaliation defense. *See Washington v. Napoli*, 61 AD3d 1243, *lv den* 13 NY3d 704 and *Perkins v. Goord*, 257 AD2d 821. Although petitioner was not entitled to the assignment of a DOCCS employee assistant in connection with the issuance of the inmate misbehavior report in the case at bar (*see* 7NYCRR §251-4.1(a))², the question remains whether or not the hearing office erred in taking no action to obtain a copy of petitioner's grievance papers.

The regulatory right of an inmate at a Tier II Disciplinary Hearing to submit relevant documentary evidence might well be compromised where such documentary evidence is in the hands of DOCCS officials and the inmate is left to his own devices in attempting to obtain copies thereof particularly where, as here, the inmate has been confined (full bed pending) since the incident giving rise to the issuance of the inmate

² One of the roles of an employee assistant is to " . . . assist the inmate in obtaining documentary evidence . . ." 7 NYCRR §251-4.2.

misbehavior report. Notwithstanding the foregoing, the Court ultimately concludes that even if the hearing officer erred in failing to obtain copies of petitioner's inmate grievance papers, such error was harmless. The inmate grievance papers did not constitute direct evidence of what transpired between the petitioner and C.O. Flint on December 29, 2011. Rather, their relevancy would pertain solely to the collateral issue of C.O. Flint's credibility, which collateral issue lies at the heart of petitioner's retaliation defense. The Hearing Officer, however, afforded petitioner ample opportunity to discuss his concerns with respect to C.O. Flint's alleged "no talking" order, which was apparently the subject of petitioner's inmate grievance complaint. Under these circumstances the Court is simply not persuaded that the absence from the hearing record of a physical copy of petitioner's grievance papers warrants reversal. *See Washington v. Napoli*, 73 AD3d 1300 and *Cowart v. Senkowski*, 263 AD2d 730.

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: September 7, 2012 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice