

Matter of Hinton v Rock
2012 NY Slip Op 32349(U)
August 13, 2012
Supreme Court, Franklin County
Docket Number: 2012-426
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

**ORDER OF TRANSFER
RJI #16-1-2012-0203.47
INDEX # 2012-426
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 May 16, 2012 and filed in the Franklin County Clerk's office on May 18, 2012. 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 April 24, 2012. The Court issued an Order to Show Cause on May 24, 2012 and has received and reviewed respondent's Answer and Return, verified on July 11, 2012, as well as counsel's Letter Memorandum of July 11, 2012. The Court has also received and reviewed petitioner's Reply to Respondent's Answer, dated July 13, 2012 and filed in the Franklin County Clerk's office on July 18, 2012.

As the result of an incident that occurred at the Upstate Correctional Facility on March 24, 2012 petitioner was issued an inmate misbehavior report charging him with violations of inmate rules 106.10 (failure to obey a direct order), 107.10 (interference with

employee), 101.20 (lewd conduct) and 107.11 (harassment). The inmate misbehavior report, authored by R. N. Wilson, alleged in relevant part, as follows:

“ . . . I was attempting to issue inmate Hinton his one-to-one medication. While I was pouring liquid medication into a cup, inmate Hinton held up a pornographic magazine, open to a picture of a nude female with legs spread. The magazine was held up to the window of the DAI cell, completely blocking my view of the inmate. I immediately told inmate Hinton to remove the magazine, he refused. I told him three times to remove the magazine, he continued to refuse to comply. I told him to take his medication; he refused. I then took the liquid medication from the open feed-up hatch, my escorting officer closed the hatch, and I continued with my medication rounds.”

A Tier II Disciplinary Hearing was commenced at the Upstate Correctional Facility on April 4, 2012. At the conclusion of the hearing, on April 24, 2012, the petitioner was found not guilty of violating inmate rule of 101.20 but guilty of the remaining charges. 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 concluded on April 24, 2012 were affirmed. This proceeding ensued.

At the underlying Tier II Disciplinary Hearing Nurse Wilson provided testimony that was consistent with the allegations set forth in the inmate misbehavior report. However, C.O. Greene, who escorted Nurse Wilson on her rounds, was unable to directly corroborate Nurse Wilson’s version of the March 24, 2012 incident. C.O. Greene’s testimony included the following:

“Hinton:	Alright, um, during the rounds, did at any time he see me put uh, (inaudible) magazine up to the window blocking the view uh, of the cell door?
Kelsh: [Hearing Officer]	Did you see him put anything up into the window?

Greene: No I didn't see that.

Hinton: At any time?

Greene: I didn't.

Hinton: Okay, um was there anything out of the way or inappropriate that night?

Kelsh: Did you see anything inappropriate that day?

Greene: I didn't see anything inappropriate.

Hinton: Was you there the whole time, during the whole incident?

Kelsh: Were you there the whole time?

Greene: Yes

Hinton: No further questions

Kelsh: Okay, thank you. I've got a question real quick, um, was there any altercation between the nurse and inmate Hinton?

Greene: Yes, she told him to put away the magazine. I couldn't see it because of the angle I was looking, I don't know if he had one or not."

At the hearing petitioner took the position that Nurse Wilson's testimony was simply untrue.¹ In this regard he made the following argument to the Hearing Officer:

"She's, she's lying man. She's lying, it's obvious she's lying. Officer Greene testified that at no time did he see a magazine on my window. He was standing right there. He's not off to the side where you don't have view to an inmate's window, if you're escorting a nurse and you are right there with the nurse, a person put up a pornographic magazine with a female with her legs spread, the officer's going to see that. The officer's right there, that's his job. If he's not escorting and constantly watching, I mean there

¹ Petitioner sought to call Superintendent Rock and Dr. Schroyer as witnesses to testify that he (petitioner) had previously written letters of complaint with regard to R.N. Wilson. Petitioner's requests that these individuals be called to testify, however, were denied by the Hearing Officer.

wouldn't be any [sic] to do. That means he's not doing his job. Cause he's there to watch and escort this woman at all time. He has to be watching. He had to be right there, the cell is right there, he's right there with her. He saying that at no time, you asked him on it, is there any time that you ever saw a magazine on a window, at no time I never (inaudible), he said no I didn't see it. I said did ever see me hold it up, he said no. The officer said no, if he didn't see a magazine held up to the window and this woman is saying that it was, she's lying. She's lying."

In reaching the determination of guilt with respect to three of the charges set forth in the inmate misbehavior report the Hearing Officer found as follows: "The written report by RN Wilson along with her verbal testimony was found to be credible. Inmate Hinton failed to provide credible testimony which refuted the charges contained in the misbehavior report."

The petitioner advances a variety of arguments in support of his ultimate contention that the results and disposition of the Tier II Disciplinary Hearing concluded on April 24, 2012 must be overturned. At this juncture the Court is most concerned with the allegations set forth in paragraph eight of the petition, under the heading that the hearing officer was not fair and impartial. In paragraph eight petitioner points out that the escort officer, C.O. Greene, " . . . testified, that at no time, did petitioner place a magazine (pornographic) on his cell window to block or obstruct the view of the RN. He testified that at all times he was present, during the whole incident. Petitioner has a large window in which the officer would have seen, if petitioner had put a magazine on his window . . . [T]he hearing officer prejudiced the disposition and failed to consider the credible evidence of C.O. Greene . . ."

Although it is clear that petitioner has also advanced due process-based procedural arguments with respect to the denial of requested witnesses/security video, it is also clear that his challenge to the hearing officer's alleged failure to consider the testimony of C.O. Greene must be construed as a challenge to the sufficiency of the evidence adduced at the

hearing. *See Bates v. Coughlin*, 145 AD2d 854. *See also Afrika v. Edwards*, 160 AD2d 1212. Although petitioner, in his Reply, denies that the “substantial evidence” issue has been raised, the Court must examine the substance of the petition and is not bound by the terms used by the petitioner to characterize the issues. *See Segrue v. City of Schenectady*, 132 AD2d 270. Since respondent’s Answer interposes no objection constituting an objection as could terminate the proceeding within the meaning CPLR §7804(g), this matter, in its entirety, must be transferred to the Appellate Division, Third Department.

It is, therefore, the decision of the Court and it is hereby

ORDERED, that the proceeding, in its entirety, is transferred for disposition to the Appellate Division, Third Department.

Dated: August 13, 2012 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice