

<b>Matter of Hyatt v Fischer</b>
2013 NY Slip Op 31121(U)
May 23, 2013
Supreme Court, Albany County
Docket Number: 559-13
Judge: Joseph C. Teresi
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STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of

SHANE HYATT, 05-A-4430,

Petitioner,

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

-against-

BRIAN FISCHER, COMMISSIONER OF DEPARTMENT  
OF CORRECTIONS AND COMMUNITY SUPERVISION ,

Respondent.

Supreme Court, Albany County All Purpose Term, May 3, 2013  
Assigned to Justice Joseph C. Teresi

**DECISION and ORDER**  
**INDEX NOs. 559-13**

**564-13**

**550-13**

**RJI NOs.**

**01-13-ST4442**

**01-13-ST4445**

**01-13-ST4447**

**APPEARANCES:**

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**TERESI, J.:**

Petitioner commenced these three CPLR Article 78 proceedings<sup>1</sup> challenging three

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<sup>1</sup> Because all of Petitioner's proceedings are captioned identically and deal with substantially similar legal issues, each proceeding will be decided within this single Decision and Order with their respective index number noted in the caption.

distinct Tier III disciplinary hearing determinations. Respondent answered and seeks dismissal of the petitions. Because Petitioner failed to demonstrate his entitlement to the relief he seeks, the petitions are each denied.

Petition One challenges the July 19, 2012 tier III hearing determination that found him guilty, for an incident occurring on June 21, 2012, of Violent Conduct, Refusing Direct Order and Refuse Search or Frisk.<sup>2</sup> Petitioner seeks reversal alleging that he was provided inadequate notice of the charges and that the hearing officer predetermined the verdicts and was biased.

Petition Two challenges the July 19, 2012 tier III hearing determination that found him guilty of Interference with Employee, Refusing Direct Order, Violent Conduct, Refusing Direct Order, Threats and Refuse Search or Frisk, for an incident that occurred on May 12, 2012. The hearing officer dismissed Petitioner's Demonstration, Threats and Gangs charges. Similar to Petition One, Petitioner seeks reversal alleging that he was provided inadequate notice of the charges.

Petition Three challenges the July 19, 2012 tier III hearing determination that found him guilty of Fighting and Refusing Direct Order, from an incident occurring on June 21, 2012; but found him not guilty of Interference with Employee. Again like Petition One, Petitioner seeks reversal of these charges alleging that the hearing officer predetermined the verdicts and was biased.

On this record, neither Petition One nor Two demonstrated inadequate notice.

“Adequate notice is provided when a misbehavior report sets forth the rule violations

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<sup>2</sup> While Petitioner was also found guilty of Interference with Employee, such verdict was overturned on administrative appeal. As such, it is not at issue in this proceeding.

alleged and the conduct providing a basis for the charges, so as to enable the preparation of a defense.” (Toro v Fischer, 104 AD3d 1036, 1037 [3d Dept 2013]; Williams v Fischer, 93 AD3d 1051 [3d Dept 2012]; 7 NYCRR 251-3.1[c]).

Here, Petition One’s misbehavior report provided sufficient notice. The misbehavior report underlying Petition One, dated June 21, 2012, unambiguously notes the rule violations’ sections and titles: “ 104.11 Violent Conduct... 106.10 Direct Order [and]... 115.10 Frisk Procedure.” The reporting Corrections Officer then sufficiently described Petitioner’s “cell fight” (constituting Violent Conduct) and his obstructive conduct during a pat frisk (the Refusing Direct Order and Refuse Search or Frisk charges).

The two misbehavior reports, both dated May 12, 2012, underlying Petition Two were likewise sufficiently specific. The first misbehavior report, reported by Corrections Officer Labarge, explicitly charged: “106.10 Direct Order / 102.10 An inmate shall not physical [sic] or verbally interfere with an employee at any time.” He described Petitioner’s refusal to comply with his “direct orders [106.10] to put his arms back in the hatch.” LaBarge further stated that Petitioner “covered his cell windows,” which interfered (102.10) with LaBarge’s performance of his duties. Such allegations, along with the balance of LaBarge’s narrative, provided Petitioner with sufficient notice. The second May 12, 2012 misbehavior report was reported by Sargent Hebert. He properly listed Petitioner’s rule violations as: “106.10 Refusing Direct Order 102.10 Threats 115.10 Search and Frisk [and] 104.11 Disturbance.” While the “104.11” charge could have been more particularly described, the misbehavior report’s inclusion of the rule’s section clarified any ambiguity. Moreover, Sargent Hebert’s description of Petitioner’s conduct was satisfactory. Sargent Hebert reported that Petitioner refused his direct order “to come out of his

cell for a cell search” (relative to the “106.10 Refusing Direct Order [and] 115.10 Search and Frisk” charges). Additionally, Sargent Hebert identified Petitioner’s threats (102.10) and violent conduct disturbance (104.11) by stating that Petitioner “was yelling to the other inmates in the block to ‘shit [sic] down all the police’ and... ‘we haven’t seen anything yet this is going to be worse then 911 terrorist attack.’” Such misbehavior report, like all of the others described above, sufficiently sets forth the pertinent rule violations and conduct.

Accordingly, Petitioner’s claims based upon allegations of insufficient notice are denied.

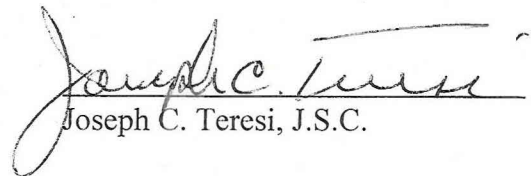
Turning to Petitioner’s contentions that the hearing officer predetermined his tier III hearings and was biased, such claims are wholly unavailing. Petitioner proffered no proof of the hearing officer’s bias. Instead, in both Petitions One and Three, Petitioner relies on the Hearing Disposition’s inclusion of an incorrect date. Petition One’s Hearing Disposition was executed by the hearing officer and noted as received by Petitioner on July 9, 2012, despite the hearing being concluded on July 19, 2012. Similarly, the Hearing Disposition underlying Petition Three noted a hearing end date of July 12, 2012, despite the hearing being concluded on July 19, 2012. These ministerial errors do not sufficiently demonstrate that Petitioner’s hearings were predetermined. Rather, without more, they constitute nothing more than typographical type errors. As such, there is “no merit to petitioner’s claim that the Hearing Officer was biased or had predetermined his guilt.” (Cornwall v Fischer, 74 AD3d 1507, 1509 [3d Dept 2010], quoting Abdullah v Goord, 36 AD3d 978 [3d Dept 2007]; McGowan v Fischer, 88 AD3d 1038, 1039 [3d Dept 2011]). “[P]etitioner simply failed to sustain his burden of proof on these issues.” (Miller v Goord, 2 AD3d 928, 930 [3d Dept 2003]).

Accordingly, the petitions are dismissed in their entirety.

This Decision and Order is being returned to the attorneys for the Respondent. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York  
May 23, 2013



Joseph C. Teresi, J.S.C.

**PAPERS CONSIDERED:**

1. Order to Show Cause, dated February 19, 2013; Petition, dated January 3, 2013, with attached Exhibits "A" - "C".
2. Answer, dated April 24, 2013, with attached Exhibits "A" - "O"; Affirmation of Colleen Galligan, dated April 24, 2013.
3. Order to Show Cause, dated February 19, 2013; Petition, dated January 3, 2013, with attached Exhibits "A" - "D".
4. Answer, dated April 27, 2013; Affirmation of Brian O'Donnell, dated April 27, 2013, with attached Exhibits "A" - "H".
5. Order to Show Cause, dated February 19, 2013; Petition, dated January 3, 2013, with attached Exhibits "A" - "C".
6. Answer, dated April 25, 2013; Affirmation of Brian O'Donnell, dated April 25, 2013, with attached Exhibits "A" - "F".