

Matter of Williams v Prack

2014 NY Slip Op 33058(U)

September 25, 2014

Supreme Court, Franklin County

Docket Number: 2013-851

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
DEANDRE WILLIAMS, #99-A-0052,
Petitioner,

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

DECISION AND JUDGMENT
RJI #16-1-2013-0442.111
INDEX # 2013-851
ORI #NY016015J

-against-

ALBERT PRACK, Director, Inmate
Disciplinary Program, NYS Department
of Corrections and Community Supervision,
Respondent.

X

This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the Petition of Deandre Williams, verified on September 30, 2013 and filed in the Franklin County Clerk's office on October 2, 2013. Petitioner, who is now an inmate at the Great Meadow Correctional Facility, is challenging the results of a Tier III Superintendent's Hearing held at the Upstate Correctional Facility and concluded on July 15, 2013. The Court issued an Order to Show Cause on October 8, 2013 and has received and reviewed respondent's Answer and Return, verified on January 24, 2014 and supported by the Letter Memorandum of Hilary D. Rogers, Esq., Assistant Attorney General, dated January 24, 2014. Under cover letter dated February 3, 2014 chambers was provided with a copy of the additional video/CD referenced in footnote #3 on the list of exhibits set forth on page three of respondent's Answer and Return (pertaining to Exhibit I). The Court has also received and reviewed petitioner's one-page Letter Reply dated January 30, 2014 and received directly in chambers on February 4, 2014.

As the result of an incident that occurred at the Upstate Correctional Facility on June 12, 2013 petitioner was issued an inmate misbehavior report charging him with a violation of inmate rule 107.20 (false statement). The inmate misbehavior report, authored by Senior Investigator Misercola, alleged, in relevant part, as follows:

“During the course of an ongoing official investigation being conducted by the office of the Inspector General, inmate Williams . . . was interviewed by this writer on June 12, 2013. In said interview Williams . . . stated that on June 2, 2013 while his breakfast was being served [illegible] staff member (officer) stated to him ‘I want you to suck my dick.’ A review of the Loronix video from June 2, 2013, breakfast time revealed that the accused officer made no derogatory sexual remarks to Williams . . . Williams . . . provided a signed statement alleging the aforementioned sexual harassment.”

A Tier III Superintendent’s Hearing was held at the Upstate Correctional Facility commencing on July 10, 2013. At the conclusion of the hearing, on July 15, 2013, petitioner was found guilty as charged and a disposition was imposed confining him to the special housing unit for three months and directing the loss of various privileges for a like period of time. Upon administrative appeal the results and disposition of the Tier III Superintendent’s Hearing concluded on July 15, 2013 were affirmed. This proceeding ensued.

Petitioner advances a variety of arguments in support of his ultimate contention that the results and disposition of the Tier III Superintendent’s Hearing concluded on July 15, 2013 must be overturned. One argument in particular - that he was denied the right to obtain and present certain documentary evidence - resonates with the Court.

Sometime after the June 2, 2013 breakfast incident petitioner submitted some form of written complaint (to the DOCCS Inspector General and/or DOCCS Commissioner?) with respect to alleged sexual harassment on the part of the correction officer who delivered the breakfast tray to his cell that morning and later removed the tray from the cell. According to petitioner, he specified in the written complaint that the

alleged sexual harassment took place when the correction officer in question was removing the breakfast tray from his cell.

When the author of the inmate misbehavior report was called to testify at the outset of the superintendent's hearing petitioner immediately interposed an objection that he had not been provided with a copy of his June 2, 2013 "grievance" (the written complaint with regard to alleged sexual harassment) in order to formulate questions to ask Senior Investigator Misercola. Although the presiding Hearing Officer noted petitioner's objection, there was no immediate disposition and petitioner was directed to proceed with his questioning of the investigator without having been provided with a copy of the June 2, 2013 written complaint.

Senior Investigator Misercola testified that he interviewed petitioner on June 12, 2013 and that the only purpose of the interview was to investigate petitioner's written sexual harassment complaint. Apparently referencing the June 2, 2013 written "grievance"/complaint, a copy of which was sought by petitioner, Senior Investigator Misercola testified that petitioner "... wrote directly to the Inspector General's Office, in addition to that, he wrote a letter of complaint to the Commissioner's Office."

Senior Investigator Misercola also testified that during the course of the June 12, 2013 interview he prepared a written statement for petitioner's signature based upon their conversation. Petitioner apparently signed the written statement and although a copy of that document was not introduced into evidence at the superintendent's hearing, Senior Investigator Misercola purported to read the statement into the record, in relevant part, as follows: "I am an inmate currently incarcerated at Upstate Correctional Facility. I am being interviewed by Senior Investigator A. Misercola of the New York State Department of Corrections and Community Supervision, office of the Inspector General . . . For the past two years I've been sexual harassed by officer's Sevey [and others] . . . The most

recent was on June 2nd 2013 when breakfast was being served . . .” Senior Investigator Misercola went on to testify that he reviewed the Loronix video depicting the outside of petitioner’s cell on June 2, 2013 “when the breakfast meal was being served . . .” According to the investigator’s testimony, the security video showed Correction Officer Sevey “ . . . going to inmate Williams’s cell, provides him with whatever um he is suppose to do for that meal. Puts it on the, a through the hatch and then he walks away from the cell. He doesn’t make any comments whatsoever to inmate Williams.” Petitioner, for his part immediately objected and asserted, in effect, that the sexual harassment he complained of took place after breakfast, when his breakfast tray was being picked up by the correction officer in question, rather than at the time the breakfast tray was delivered. Over petitioner’s further objection the Loronix video of June 2, 2013 depicting the outside of petitioner’s cell when his breakfast tray was delivered by the Correction Officer Sevey was viewed on the record. After the video was played the following colloquy occurred:

“Williams:	Now where’s the rest of the tape?
Tatro [Hearing Officer]:	That’s the video of the incident that you stated in your complaint.
Williams:	No that’s not the video that I stated in my complaint. I stated to him [Senior Investigator Misercola] and he wrote down is fiction you know what I’m sayin . . . That happened at a different time then what I say.
Misercola:	You reviewed your statement before you signed it.
Williams:	Come on, I didn’t even look at it. I
Misercola:	[I]f it was wrong you should have corrected it.

- Williams: I didn't even look at it. Cause you were so . . . you were so busy salt talkin me you know what I'm sayin . . .
- Tatro: Okay. Listen to me, Williams, Williams. Do you have any direct question in regards to this incident for Investigator Misercola?
- Williams: I don't have nothing to say to him cause he's a liar."

Thus, at the superintendent's hearing petitioner maintained, in effect, that he did not lie to Senior Investigator Misercola regarding the alleged incident of sexual harassment. Rather, petitioner took the position that he filed a written "grievance"/complaint specifying that the alleged incident took place when the breakfast tray was being removed from his cell and that this version of events was also verbally communicated to Inspector Misercola during the June 12, 2013 interview. According to petitioner's position, the investigator failed - for whatever reason - to accurately set forth the correct version of the June 2, 2013 incident in the written statement prepared on June 12, 2013 and petitioner, in turn, failed to carefully examine the prepared statement before signing it.

Some effort was made during superintendent's hearing to shed some light on the issue of whether or not petitioner verbally advised Senior Investigator Misercola on June 12, 2013 that the alleged June 2, 2013 sexual harassment incident took place when the breakfast tray was being removed, rather than delivered, to petitioner's cell. A security video/CD of the room were the June 12, 2013 interview of petitioner by Investigator Misercola was viewed at the hearing, but that security video/CD apparently had no audio component. In addition, the hearing officer requested an additional portion of the Loronix video depicting the outside of petitioner's cell on June 2, 2013 at the time

the breakfast tray was picked up. That portion of that Loronix video, however, was no longer available at the time of the hearing.

Despite all the foregoing, the hearing officer effectively denied petitioner's request that he be provided with a copy of the written June 2, 2013 "grievance"/complaint pertaining to the alleged sexual harassment of that date. According to the hearing officer, ". . . that 6/02 grievance that you're talking about does not pertain to this ticket." Petitioner responded that the "grievance"/complaint was relevant. According to petitioner, ". . .if you see the [June 12, 2013 written] statement and if you see the [June 2, 2013] grievance, you will see that this officer's [Senior Investigator Misercola] lying." The hearing officer concluded the discussion by stating that ". . . the paperwork that you're talking about, Investigator Misercola already stated that you have to FOIL for that information. That is uh, is [sic] guess it's considered private by I.G. [Inspector General] and it's not to be distributed to everybody. Okay, that information that you're already talking about, I don't have access to that."

In view of the defense asserted by petitioner at the Tier III Superintendent's Hearing concluded on July 15, 2013, the Court finds that his written June 2, 2013 "grievance"/complaint was clearly relevant with respect to the issue of whether or not Inspector Misercola was aware of petitioner's contention that the alleged sexual harassment of June 2, 2013 took place when the breakfast tray was being removed from, rather than delivered to, petitioner's cell. If the June 2, 2013 "grievance"/complaint clearly sets forth this position, then that fact would certainly call into question the integrity of the investigative process, including the preparation of the June 12, 2013 written statement (for petitioner's signature) stating that the alleged sexual harassment took place when the tray was delivered. If, however, petitioner's June 2, 2013 written "grievance"/complaint was equivocal, or stated that the alleged sexual harassment took

place when the tray was being delivered, then his attack on the integrity of the investigative process would be thwarted. In either event, the precise language of petitioner, as set forth in his June 2, 2013 “grievance”/complaint, was clearly relevant to the disposition of the superintendent’s hearing concluded on July 15, 2013 and the hearing officer’s failure to require the production of that document¹ constituted denial of petitioner’s right to submit relevant documentary evidence.

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

ADJUDGED, that the petition is granted, without cost or disbursements, but only to the extent that the results and disposition of a Tier III Superintendent’s Hearing concluded on July 15, 2013 are reversed and the respondent is directed to expunge all reference to such hearing, as well as the incident underlying same, from petitioner’s institutional records.

Dated: September 25, 2014 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice

¹ The Court is simply not persuaded that any confidentiality concerns should have barred petitioner’s access to a copy of the June 2, 2013 “grievance”/complaint. That document, after all, was written by petitioner and he was therefore fully aware of its contents. If, however, the hearing officer nevertheless believed that confidentiality concerns warranted against petitioner’s direct access to his own “grievance”/complaint, the hearing officer could have simply examined the June 2, 2013 “grievance”/complaint outside of the presence of the petitioner and the document would then have been available to the Court as a confidential exhibit.