Matter of Williams v Annucci
2015 NY Slip Op 31814(U)
September 30, 2015
Supreme Court, Franklin County
Docket Number: 2015-30
Judge: S. Peter Feldstein

STATE OF NEW YORK
SUPREME COURT **COUNTY OF FRANKLIN**

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In the Matter of the Application of
TYRELL WILLIAMS, #12-B-3800,
Petitioner,

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

DECISION, ORDER AND JUDGMENT
RJI #16-1-2015-0014.04
INDEX # 2015-30
ORI #NY016015J

-against-

ANTHONY J. ANNUCCI, Commissioner,
NYS Department of Corrections and Community Supervision,
Respondent.

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This is a proceeding for judgment pursuant to Article 78 of the CPLR that was originated by the *pro se* Petition of Tyrell Williams, dated December 10, 2014 and filed in the Franklin County Clerk's office on January 12, 2015. Petitioner, who is now an inmate at the Bare Hill Correctional Facility, is challenging the November 7, 2014 determination administratively reversing the results and disposition of a Tier III Superintendent's Hearing (first re-hearing) held at the Upstate Correctional Facility and concluded on September 5, 2014 but ordering a re-hearing. Petitioner also seeks judgment directing that the results and disposition of the Tier III Superintendent's Hearing (first re-hearing) concluded on September 5, 2014 be reversed and that all reference thereto be expunged from his institutional records.

The Court issued an Order to Show Cause on January 15, 2015 and has received and reviewed respondent's Notice of Motion to Dismiss, supported by the Affirmation of Christopher John Fleury, Esq., Assistant Attorney General, dated March 13, 2015. The Court has also received and reviewed petitioner's Reply in Opposition of Respondent

Motion to Dismiss, verified on March 19, 2015 and filed in the Franklin County Clerk's office on March 25, 2015.

By Notice of Appearance dated May 20, 2015, Alissa R. Hull, Esq., Prisoner's Legal Services of New York, appeared on behalf of petitioner. At counsel's request the Court adjourned the April 3, 2015 return date of respondent's pending motion to dismiss. The Court next received and reviewed the opposing Affirmation of Alissa R. Hull, Esq., dated June 24, 2015 and supported by her Supplemental Memorandum of Law in Opposition to Respondent's Motion to Dismiss, also dated June 24, 2015. The Court also received and reviewed the Supplemental Letter Memorandum of Christopher J. Fleury, Esq., Assistant Attorney General, dated June 29, 2015. Additional correspondence from counsel for the petitioner, dated July 7, 2015, has also been received and reviewed.

As the result of an incident that occurred at the Riverview Correctional Facility on April 5, 2014 petitioner was issued an inmate misbehavior report charging him with violations of inmate rules 100.11 (assault on staff), 104.11 (violent conduct), 113.10 (weapon), 113.11 (altered item), 104.13 (creating a disturbance), 107.10 (interference with employee) and 106.10 (refusing direct order). The inmate misbehavior report, authored by Correction Sergeant Pickman, alleges, in relevant part, that petitioner " . . . was involved in an assault on Staff . . . This assault started at the Officers Station and ended in cube #49. Officer W. Bresett was the Staff member who received injuries from you [petitioner] during this assault. Officer Bresett had injuries to his face and right arm and hand. These injuries were consistent with the use of a [sic] unknown and unrecovered cutting instrument. The assault included the use of this unrecovered cutting instrument along with the use of your fists. Officer Bresett [sic] injuries included mass swelling of his face and right arm and hand. You Inmate Williams refused direction from Officer Bresett

to stop this assault and comply with his directions to cease. Body holds were used by Officers Bresett and W. Ploof and C. Hewko to get you to comply with Staff directions."

A Tier III Superintendent's Hearing was initially held at the Mid-State Correctional Facility commencing on April 15, 2014. At the conclusion of the hearing, on April 19, 2014, petitioner was found not guilty of violating inmate rules 104.13 (creating a disturbance) and 113.11 (altered item) but guilty of the five remaining charges. A disposition was imposed confining him to the special housing unit for 42 months (April 5, 2014 to October 5, 2017), directing the loss of various privileges for a like period of time and recommending the loss of 42 months of good time. On June 18, 2014, upon administrative appeal, the results and disposition of the Tier III Superintendent's Hearing concluded on April 19, 2014 were reversed and a re-hearing was ordered (*see* 7 NYCRR §254.8(d)).

The first re-hearing was commenced at the Upstate Correctional Facility on June 25, 2014. At the conclusion of the first re-hearing, on September 5, 2014, petitioner was again found not guilty of violating inmate rules 104.13 and 113.11 but guilty of the five remaining charges. A disposition was imposed confining him to the special housing unit for 42 months (April 5, 2014 to October 5, 2017), directing the loss of various privileges for a like period of time and recommending the loss of 42 months of good time. On November 7, 2014, upon administrative appeal, the results and disposition of the Tier III Superintendent's Hearing (first re-hearing) concluded on September 5, 2014 were reversed and a re-hearing was again ordered. The November 7, 2014 reversal memorandum stated, in relevant part, that the administrative reversal/re-hearing order was based upon "POTENTIALLY RELEVANT WITNESS WAS INAPPROPRIATELY DENIED. (PAROLEE)." Although petitioner only seeks relief with respect to the results and disposition of the first re-hearing, concluded on September 5, 2014, and the

November 7, 2014 administrative reversal/re-hearing order, the Court, for the purpose of providing context, finds it appropriate to set forth subsequent developments.

A second re-hearing was commenced at the Upstate Correctional Facility on November 25, 2014. At the conclusion of the second re-hearing, on January 8, 2015, petitioner was again found not guilty of violating inmate rules 114.13 and 113.11 but guilty of the five remaining charges. A disposition was imposed confining him to the special housing unit for 24 months (April 5, 2014 to April 5, 2016), directing the loss of various privileges for a like period of time and recommending the loss of 24 months of good time. This proceeding was commenced on January 12, 2015 when the *pro se* Petition of Tyrell Williams, dated December 10, 2014, was filed in the Franklin County Clerk's office. *See* CPLR §304(a).

After this proceeding was commenced petitioner took an administrative appeal from the results and disposition of the Tier III Superintendent's Hearing (second re-hearing) concluded on January 8, 2015. On March 10, 2015 the results and disposition of the second re-hearing were administratively reversed but, once again, a re-hearing was ordered. The third re-hearing was commenced at the Upstate Correctional Facility on March 19, 2015. At the conclusion of the third re-hearing, on May 7, 2015, the charges that petitioner violated inmate rules 113.10 (weapon) and 113.11 (altered item) were dismissed but he was found guilty of the remaining five charges, including the charge of violating inmate rule 104.13 (creating a disturbance). A disposition was imposed confining petitioner to the special housing unit for 24 months, with four months suspended (April 5, 2014 to December 5, 2015), directing the loss of various privileges for a like period of time and recommending the loss of 24 months of good time. Notwithstanding the foregoing, the record herein suggests that these dispositional penalties were modified at the facility level to confinement in the special housing unit for

16 months and 26 days, with four months suspended (April 5, 2014 to August 31, 2015), directing the loss of various privileges for a like period of time and recommending the loss of 24 months of good time. On June 26, 2015 the results and disposition of the Tier III Superintendent's Hearing (third re-hearing) concluded on May 7, 2015, as apparently modified at the facility level, were affirmed on administrative appeal.

Petitioner advances a variety of arguments in support of his contention that the results and disposition of the Tier III Superintendent's Hearing (first re-hearing) concluded on September 5, 2014 must be overturned. He also argues that DOCCS officials were precluded, on constitutional and other grounds, from issuing the November 7, 2014 re-hearing order. Respondent's motion to dismiss, on the other hand, is ultimately premised upon the assertion that there is no basis in law for the Court to prohibit the issuance of the re-hearing order - and thus reach the merits of petitioner's challenge to the first re-hearing - since DOCCS officials had yet to issue a final determination on administrative appeal. Respondent also asserts in his motion papers that he " . . . has the authority to hold an inmate in a Special Housing Unit who is awaiting 'determination of a disciplinary hearing or superintendent's hearing.' 7 NYCRR §301.3. Therefore, Petitioner is not entitled to be released from the Special Housing Unit until a final determination has been made."

The law is clear - and petitioner concedes - that where the DOCCS Commissioner " . . . has not issued a final determination, it is entirely proper for the Commissioner to order a rehearing upon his administrative review of an inmate disciplinary proceeding, even where an error sought to be corrected is of constitutional magnitude." *Stephens v. Goord*, 273 AD2d 656, 657, *lv denied* 95 NY2d 766 (citations omitted). *See Hughes v. Bedard*, 117 AD3d 1246. Although, as counsel for the petitioner points out, the cases authorizing administrative re-hearing orders prior to final determinations by the DOCCS

Commissioner all involve reversals on administrative appeal following initial inmate disciplinary proceedings, the Court finds nothing in the broad language of the Appellate Division, Third Department, to suggest that the same rule would not apply where, as here, a second re-hearing has been ordered. Although counsel asserts that respondent's extended delay in reaching a final administrative determination with respect to petitioner's superintendent's hearing violated the provisions of §301(1) of the State Administrative Procedure Act, the Court notes that the New York State Department of Corrections and Community Supervision is not an "agency" subject to the provisions of the State Administrative Procedure Act except when the department is acting in its rule making capacity. *See* State Administrative Procedure Act §102(1). Accordingly, the Court finds no basis to overturn the November 7, 2014 determination administratively reversing the results and disposition of the Tier III Superintendent's Hearing (first re-hearing) concluded on September 5, 2014. The Court also finds no basis to reach the merits of petitioner's challenge the results and disposition of the first re-hearing, concluded on September 5, 2014, since such challenge has been rendered moot by the November 7, 2014 administrative reversal/re-hearing order.

Notwithstanding the foregoing, the Court has serious concerns with respect to the disturbing record in the case at bar, particularly as that record extends beyond the November 7, 2014 administrative reversal/re-hearing determination. Petitioner was effectively held in pre-superintendent's hearing determination SHU confinement (7 NYCRR §§251-1.6(d) and 301.3(a)(1)) from April 5, 2014 (the date of the incident underlying the issuance of the misbehavior report) to May 7, 2015 (the date the third re-hearing concluded). Petitioner remained in SHU confinement (post-disposition) after May 7, 2015 with the results and disposition of the third re-hearing, as apparently modified at the facility level, ultimately affirmed on administrative appeal on June 26,

2015. Taking the position espoused by the respondent to its logical end[1], petitioner would have no legal basis to judicially challenge the results and disposition of the original hearing (concluded on April 19, 2014), the first re-hearing, (concluded on September 5, 2014) or the second re-hearing (concluded on January 8, 2015). Petitioner's challenge to the results and disposition of the third re-hearing (concluded on May 7, 2014), moreover, could not have been commenced until June 26, 2015, after final administrative action (affirmance on administrative appeal) by the DOCCS Commissioner. Thus, again taking respondent's argument to its logical end, that would be no regulatory, statutory or constitutional impediment to the holding of an inmate in SHU confinement for almost 15 months (April 5, 2014 to June 26, 2015) without the inmate having any judicial recourse with respect to such confinement.

This Court has determined not to overturn the November 7, 2014 re-hearing order (issued by respondent upon administrative reversal of the results and disposition of the first re-hearing concluded on September 5, 2014) and it is not called upon, at this juncture, to adjudicate the validity of the March 10, 2015 re-hearing order (issued by respondent upon administrative reversal of the results and disposition of the second re-hearing concluded on January 8, 2015). Even if the Court was to ultimately uphold the validity of all of the re-hearing orders, a serious due process issue would remain as to whether or not DOCCS officials could lawfully hold an inmate in pre-hearing SHU

[1] Since petitioner only seeks relief with respect to the results and disposition of the first re-hearing, concluded on September 5, 2014, and the November 7, 2014 administrative reversal/re-hearing order, it is presumed that the respondent's arguments were developed with that limitation in mind. Nevertheless, there is nothing in respondent's papers to suggest that his arguments would not also be applicable with respect to the results and disposition of the second re-hearing, concluded on January 8, 2013, as well as the March 10, 2015 administrative reversal/re-hearing order.

confinement throughout an extended hearing/multiple re-hearing process[2]. In the case at bar, however, any concerns with respect to petitioner's pre (or post)-dispositional SHU confinement were rendered moot by his apparent release from SHU confinement at the Upstate Correctional Facility upon the expiration of the post-dispositional confinement ordered upon conclusion of the third re-hearing on May 7, 2015, as apparently modified at the facility level and affirmed on administrative appeal.

Accordingly, the Court finds that respondent's motion to dismiss should be granted, subject of course to petitioner's right to challenge, on the merits, the results and disposition of the third re-hearing concluded on May 7, 2015, as affirmed on administrative appeal on June 26, 2015.

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

ORDERED, that the respondent's motion is granted; and it is further

ADJUDGED, that the petition is dismissed.

Dated: September 30, 2015 at
Indian Lake, New York.

S. Peter Feldstein
Acting Supreme Court Justice

[2] Petitioner suggests in his opposing papers that the tortured procedural history associated with the original superintendent's hearing and multiple re-hearings represents a conscious attempt on the part of the respondent to prevent judicial review. According to petitioner, "[i]f the Court allows the Department of Corrections to win on grounds of mootness everytime [sic] an inmate petitions for redress, the policy of ordering rehearings to conger up violations will be come the answer to every inmate's petition in regards to violations at a disciplinary hearing. The respondent will use this argument every time." For what it is worth, however, this jurist notes that he has been called upon to adjudicate CPLR Article 78 proceedings brought by inmates challenging the results of disciplinary/superintendent's hearings for more than two decades and, to the best of his recollection, this is the first time he has been faced with multiple administrative reversals/re-hearing orders.