Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-549

MAY TERM, 2007

John Casey	}	APPEALED FROM:
	}	
v.	}	Washington Superior Court
	}	
Robert Hofmann, Commissioner of Department of Corrections and Raymond Flum, Assistant Director	}	DOCKET NO. 632-10-05 Wncv
	}	Trial Judge: Mary Miles Teachout

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals the superior court's order granting summary judgment to defendant Commissioner of the Department of Corrections with respect to plaintiff's Vermont Rule of Civil Procedure 75 complaint seeking review of the Department's prison disciplinary actions against him. We affirm.

Plaintiff is an inmate in the custody of the Department. In August 2005, while plaintiff was a participant in the Workforce Development Program, he was charged with violating a prison disciplinary rule prohibiting, in relevant part, attempted assault or fighting. Plaintiff was found guilty of violating the disciplinary rule and sentenced to four days of segregation with credit for time served. His conviction was upheld following an administrative review. Later, he was removed from the workforce program as a result of the disciplinary violation. In October 2005, plaintiff filed a Rule 75 complaint with the superior court asserting, among other things, that there was insufficient evidence to support the hearing officer's determination of a violation. Plaintiff petitioned the court to overturn the disciplinary violation and order the Department to readmit him into the workforce program. Both the Department and plaintiff, who was represented by counsel, filed motions for summary judgment. The superior court granted the Department's motion and denied plaintiff's, concluding that there was sufficient evidence to support the disciplinary violation, and that the Department had not abused its discretion by removing plaintiff from the workforce program.

On appeal, plaintiff raises four claims of error, two of which challenge the sufficiency of the evidence to support the finding of a disciplinary violation, and two of which challenge his removal from the workforce program. With respect to the first two, plaintiff argues that the only evidence offered in support of the charged offense—a correctional officer's assumption that a fight was about to take place and the officer's disbelief that one was not going to take place—cannot support the hearing officer's finding that he was guilty of the offense by a preponderance of the evidence. We

find this argument unavailing. "Prisoners accused of disciplinary infractions may not be punished for such actions unless their guilt can be shown by a preponderance of the evidence." LaFaso v. Patrissi, 161 Vt. 46, 54 (1993). Nevertheless, "[o]n judicial review of the sufficiency of evidence at a prison disciplinary hearing, the hearing officer's final determination must be upheld if it is supported by 'some evidence' in the record." Herring v. Gorczyk, 173 Vt. 240, 243 (2001). "To determine whether the 'some evidence' standard is met, 'the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.' " Id. (quoting Superintendent v. Hill, 472 U.S. 445, 455-56 (1985)).

Here, in determining that the above standards were met, the superior court cited evidence of reports submitted by different correctional officers who either observed part of the incident or recounted contemporaneous statements made to them by other named persons who were present during the incident. As the court noted, there was evidence that plaintiff was observed motioning another inmate into his cell and moving around the inmate in a fighting posture. Witnesses described the inmates as being within a foot of each other in an agitated state, as evidenced by their body language—gesturing and staring. In short, there was "some evidence" for the superior court to conclude that the underlying conviction for attempted assault or fighting was supported by the evidence. Further, as the superior court determined, the evidence was sufficient for the hearing officer to have concluded that the charge was supported by a preponderance of the evidence.

Plaintiff also argues that the Department's decision not to reinstate him into the workforce program was an abuse of discretion, considering that the same evidence was brought against the other inmate involved in the confrontation, and yet the other inmate eventually had his disciplinary violation overturned and was reinstated into the workforce program. Again, we find plaintiff's argument unavailing. As the trial court found, plaintiff failed to show specific facts demonstrating that the two inmates' cases were indistinguishable, and there are many possible factual scenarios that could support different outcomes for the two inmates. Given the Department's broad discretion in disciplinary matters, plaintiff has failed to demonstrate grounds for finding an abuse of discretion on the part of the Department. See Nash v. Coxon, 155 Vt. 336, 338 (1990) (stating that broad discretion must be granted to allow correctional authorities to determine what mode of treatment to provide for individual inmates).

Affirmed.

BY THE COURT:

_____

Denise R. Johnson, Associate Justice

_____

Marilyn S. Skoglund, Associate Justice

_____

Brian L. Burgess, Associate Justice