

SUPERIOR COURT
Washington Unit
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www.vermontjudiciary.org



CIVIL DIVISION
Case No. 22-CV-03148

Eric Champagne v Nicholas Deml et al

Final Order on Rule 75 Appeal

Plaintiff Eric Champagne brings this petition under Vt. R. Civ. P. 75 to challenge Department of Corrections' (DOC's) determination that he had committed a disciplinary violation. Specifically, that he had assaulted a DOC staff member, COI Forbes. Plaintiff is represented by Jill Martin, Esq. DOC is represented by Assistant Attorney General Lauri Fisher. On May 15, 2023, the Court held an evidentiary hearing on the matter. The parties later submitted post-trial memorandums. In light of all of the submissions, the Court makes the following determinations.

Findings of Fact

Prior to the merits hearing, the parties agreed upon the following facts.

1. On August 9, 2022, Mr. Champagne was in the custody of the Vermont Department of Corrections and housed in H-Pod at Northwest State Correctional Facility ("NWSCF.")
2. At approximately 5:40 PM, Correctional Officer (CO) Forbes, who was working on H Pod, went to Mr. Champagne's cell, H101A.
3. An altercation between Mr. Champagne and CO Forbes ensued.
4. Thereafter, multiple COs responded, including CO Shover, CO Peterson, and CO Lockerby.
5. DOC filed an Incident Report dated August 9, 2022.
6. The incident report included 8 photographs of the alleged injuries to CO Forbes as well as of the unit at the time of the altercation.

7. That same day, DOC filed an Inmate Disciplinary Report alleging that Mr. Champagne committed a Major A1 disciplinary violation (“Assault on a Department of Corrections’ employee, contractor, or volunteer”).

8. On August 12, 2022, Mr. Champagne was noticed of a disciplinary hearing on August 15, 2022 at 8 AM. On the Notice, Mr. Champagne requested a hearing assistant and indicated that he wished to have CO Forbes present.

9. On August 15, 2022, Hearing Officer Robert Berthiaume held a disciplinary hearing for Mr. Champagne. Mr. William McLaughlin acted as Mr. Champagne’s hearing assistant.

10. Hearing Officer Berthiaume considered the Notice of Hearing, Investigation and Disciplinary Reports, 8 photos, as well as the testimony of Mr. Champagne.

11. At the conclusion of the hearing, Mr. Berthiaume found Mr. Champagne guilty and issued the following findings of fact:

1. COI Forbes observed I/I Champagne acting suspicious within his cell. 2. COI Forbes observed I/I Champagne pouring facility cleaning agent into a container prior to leaving for transport. 3. COI Forbes entered the cell turned away from him as if he was going to walk out of the cell. 4. COI Forbes stopped I/I Champagne and I/I Champagne tried to pull away. 5. I/I Champagne refused COI Forbes direction and pulled away from him. 6. I/I Champagne struck COI Forbes in the face with a closed fist causing injury.

12. Mr. Champagne thereafter submitted a timely appeal to the superintendent.

Thereafter, Mr. Champagne filed the instant appeal.

At the merits hearing in this matter, the Court accepted the testimony of Plaintiff, Hearing Assistant McLaughlin and Hearing Officer Berthiaume. It also admitted the recording of Mr. Champagne’s disciplinary hearing.

Mr. Champagne testified at hearing that he first saw photographs of the incident just prior to the hearing. Before going on the record, he asserted that he asked the Hearing Officer to call three of the persons who could be seen in the pictures, as they were witnesses to the events. Mr. Champagne stated that the Hearing Officer refused to allow the witnesses. He stated that he did not raise the issue on the record out of fear of failing to obey the Hearing Officer’s directive.

Hearing Assistant McLaughlin testified that he thought they had raised the issue of the three witnesses on the record. He also said that they would object to the hearing due to the lack of witnesses.

Both agreed that Plaintiff did not ask for a continuance.

Hearing Officer Berthiaume testified contrary to the above evidence. He averred that he has been a Hearing Officer for over 20 years. While he could not say with certainty that no discussions were had off-the-record, he was clear that, if such discussions occurred, they were not substantive. He stated he would never hold a substantive hearing discussion off-the-record. He was also certain that he did not deny any request for witnesses and that, if such a request had been made, it would have been accommodated.

The hearing recording lends some support to both sides, although key portions favor the Defendant. Plaintiff told the Hearing Officer that he understood his rights. The Hearing Officer asked whether Plaintiff wished to raise any due process issues. Plaintiff did not mention the purportedly missing witnesses, although he raised a number of other points he did not press at the final hearing. Plaintiff noted that he got the pictures just before the hearing. On the other hand, Hearing Assistant McLaughlin clearly said to Plaintiff that you “should have asked” for other witnesses, noting that Plaintiff had “only asked for COI Forbes” to be present. Plaintiff told Hearing Assistant McLaughlin that he just learned of the witnesses. The Hearing Officer later asked Plaintiff if there was “anything else” he wanted to bring up. Plaintiff made no mention of the witnesses. The Hearing Officer then asked whether Hearing Assistant McLaughlin wanted to raise any other due process issues concerning the hearing process. He said no. There is no dispute that Plaintiff made no request for a continuance to obtain the three witnesses.

After considering all the evidence, the Court finds the evidence weighs evenly as to whether Plaintiff actually made a request for DOC to produce the three witnesses.

Analysis

Plaintiff does not contest that there is “some evidence” to support his conviction. *LaFaso v. Patrissi*, 161 Vt. 46, 49 (1993) (adopting “some evidence” standard set out in *Superintendent v. Hill*, 472 U.S. 445, 455 (1985)). Instead, he maintains that the hearing violated his due process rights.

DOC does not contest that, in Vermont, prisoners charged with violating DOC disciplinary rules are entitled to due process under state statutes and constitutional law. See, e.g., *LaFaso v. Patrissi*, 161 Vt. 46, 48 (1993); but cf. *Sandin*

v. Conner, 515 U.S. 472 (1995). That process includes the right to notice and a hearing to contest the charges. 28 V.S.A. § 852(b). With some limitations, at that hearing, prisoners charged with violations of disciplinary rules have a right to confront the officer who reported the alleged violations and to call witnesses who have relevant information about the charged incident. *Id.*; Vt. Admin. Code 12-8-13:2(g) (similar provision).

Additionally, DOC follows a Policy Directive (410.01) to address circumstances where a witness that is requested by a prisoner is not available for the hearing:

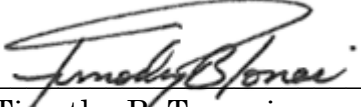
If any requested witness(es) (including the Reporting Officer) did not testify or did not appear at the hearing for any reason, the Hearing Officer will state the reasons why on the hearing recording and in the written report, noting in the report the forms of alternative testimony used. Witnesses may provide testimony using alternate forms of communication when they cannot be present at the hearing (e.g. ... written statement).

Here, among other arguments, the DOC contends that Mr. Champagne did not make the request for the three witnesses. Its position is supported by Hearing Officer Berthiaume's testimony and portions of the hearing recording. Plaintiff's contrary contention is supported by his testimony, the testimony of Hearing Assistant McLaughlin, and portions of the hearing recording.

As noted in the findings of fact section, the Court has found the conflicting evidence in this matter to be in equipoise. Under such circumstances, the Court concludes that Plaintiff has failed to carry his burden of proof of establishing by a preponderance the factual predicate for his claimed due process violation. As a result, the Court need not engage in or address any of the additional contentions of the parties.

Conclusion

WHEREFORE, Plaintiff's appeal is denied.
Electronically signed on Friday, June 30, 2023.


Timothy B. Tomasi
Superior Court Judge